

No. 13135

United States
Court of Appeals
for the Ninth Circuit.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Appellant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT,
CO., LTD., a Corporation, and TUG SEA
FOX, INC., a Corporation, on Their Own Be-
half and on Behalf of the Master, Officers and
Crew of the Tug Sea Fox,

Appellees.

Apostles on Appeal

Appeal from the United States District Court for the
Northern District of California,
Southern Division

FILED

JAN - 9 1952

PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

GRAHAM AND MORSE,

CLARENCE G. MORSE,

310 Sansome Street,
San Francisco, California,

Proctors for Respondent, Cross-Libelant
and Appellant.

JAMES A. QUINBY,

LLOYD M. TWEEDT,

STANLEY J. COOK,

1000 Merchants Exchange Building,
San Francisco, California,

Proctors for Libelants, Cross-Respondents
and Appellees.

In the Southern Division of the United States
District Court for the Northern District of
California

In Admiralty—No. 25539-E

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD, a Corporation, on Its Own Behalf
and on Behalf of the Master, Officers and Crew
of the Tug Sea Fox,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Respondent.

LIBEL FOR SALVAGE

To the Honorable the Judges of the Above-Entitled
Court:

The libel of Shipowners & Merchants Towboat
Co., Ltd., a corporation, owner pro hac vice of the
diesel tug Sea Fox, and on behalf of her master,
officers and crew, against Waterman Steamship
Corporation, a corporation, owner of the American
steamer Herald of the Morning, in a cause of sal-
vage, civil and maritime, alleges:

I.

That libelant is a corporation organized and
existing under and by virtue of the laws of the
State of California; libelant, at all times herein

mentioned, was and now is the demise charterer and operator of the tug Sea Fox and as such the chartered owner thereof; said Sea Fox is a diesel tug with the length of 126 feet overall, a beam of 28 feet, a depth of 14½ feet, and a rated horsepower of 1,200; said tug at all times herein mentioned had a master, officers and crew, in all making a complement of 12 men.

II.

That respondent, Waterman Steamship Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with a place of business in the City and County of San Francisco, State of California; that said respondent is, and ever since noon of the 8th day of November, 1948, has been the owner of the American steamer Herald of the Morning, now known as the Citrus Packer; said steamer, which at all times herein mentioned was without cargo, was of 10,500 tons deadweight and was known as a C-2 type vessel; at all times herein mentioned said steamer was a dead ship without power of propulsion or any power to handle her anchors, gear, equipment or towing hawser; she had a single anchor available for use until it was lost as hereinafter alleged; her draft at all times herein mentioned was 9 feet forward and 12 feet aft.

III.

That on or about November 1, 1948, libelant was engaged to furnish either the tug Sea Prince or

the tug Sea Fox and use its best efforts to tow the Herald of the Morning from San Francisco Bay to Everett, Washington, where she was to be repaired and placed in operating condition; thereafter libelant furnished said tug Sea Fox and on November 5, 1948, her steel towing hawser was shackled onto the starboard anchor chain of the Herald of the Morning and with the assistance of the tug Sea Wolf departed from Moores Shipyard, Oakland, with said steamer in tow; while at sea on November 6, 1948, wind and seas increased, the tow was shearing and she eventually fell off into the trough of the sea; wind and seas continued to increase and the swell became heavy; the tug was pitching heavily and both vessels were making sternway in the adverse conditions; on the afternoon of November 7, 1948, the tug's steel towing hawser parted and thereafter the tug placed its spare steel hawser on her towing winch and endeavored to pass it to the tow, but the men on the tow were unable to shackle it onto the tow's anchor chain and the tug stood by the drifting vessel throughout the night; on the early morning of November 8, 1948, the second steel hawser was passed to the tow, but in paying it out on the tug it fouled on the towing drum so that the tug could not proceed safely with the tow to Drakes Bay as a place of safety; being informed of the situation libelant dispatched the tug Sea Prince, of which it was the owner pro hac vice, from San Francisco to the scene; about 3:30 p.m. said tug Sea Prince arrived, the tug Sea Fox

burned her wire clear of the towing machine and the tug Sea Prince took the tow into Drakes Bay, where both tugs and tow arrived about 7:30 p.m. on November 8, 1948; in Drakes Bay the steel towing hawser of the tug Sea Prince was shackled onto the starboard anchor chain of the tow and it was thereafter passed to the Sea Fox and there made fast on the towing drum and preparations made to resume the voyage; the Sea Fox with the Herald of the Morning in tow, departed from Drakes Bay about midnight and the tug Sea Prince returned to San Francisco; on November 11, 1948, strong winds, heavy seas and swells were encountered and they progressively increased and continued until November 14th, when the conditions got much worse and the towing engine clutch on the Sea Fox broke and the towing board was lost; it was found impossible to maintain headway and both vessels were drifting; in these circumstances the Sea Fox radioed the Coast Guard for assistance and at 9:45 p.m. the Coast Guard cutter Balsam arrived and attempted, without success, to get a hawser aboard the Herald of the Morning; during all of this time the Sea Fox held onto the tow at considerable risk to herself, her master, officers and crew; about 11 p.m. the wind decreased somewhat and the Sea Fox made headway with the tow toward the open sea; on November 15, 1948, with the cutter Balsam in the vicinity, the Sea Fox continued under way with the tow, but on the night of that day a whole gale was encountered, accompanied with tremendous

seas, all of which prevented the vessels from making any headway and caused the towing hawser to pay out on the towing winch brakes; later on the 15th, the tug Neptune arrived on the scene and attempted to get a line aboard the tow without success; about midnight the Neptune advised that she would stand by until daybreak; the Sea Fox had great difficulty in keeping out of irons and with the tow was making sternway in large and heavy seas; the same adverse conditions continued on November 16th and it was found impossible to control the tow; said adverse conditions caused the steel towing hawser to part during the early morning of the 16th and the helpless tow drifted off into the night; the Sea Fox, Neptune and cutter Balsam kept following the drifting tow and along about daylight, with a gale still blowing and in tremendous seas, every effort was made to get a line aboard the tow; the Neptune eventually succeeded in getting a line aboard the tow, but the crew of the tow could not handle it or make it secure; the Neptune continued her efforts and in so doing was thrown against the stem of the tow and mortally wounded, as a result of which she thereafter sank and became a total loss; in the meantime, the Herald of the Morning was drifting inshore rapidly and the cutter Balsam got a manila hawser aboard the drifting vessel, but it soon parted; during this interval the Sea Fox was standing by the wounded Neptune, pursuant to orders of the master of the cutter Balsam, and after the men aboard the sinking Neptune were rescued and

placed aboard the Balsam by means of rubber life-boats, the Sea Fox set out to rescue the drifting Herald of the Morning; she arrived in the vicinity of the helpless steamer about 6:45 p.m. on the 16th and found her in shoaling water rapidly drifting toward the beach; the master of the Sea Fox ordered the master of the Herald of the Morning to let go his port and only anchor and pay out 8 shots of chain; after considerable delay those on the Herald of the Morning followed said advice and let go said anchor in about 35 fathoms; the steamer continued to drift shoreward quite a distance, dragging her anchor and chain, but she eventually fetched up; the Sea Fox attempted to get a hawser aboard the steamer, but was unable to do so in the prevailing conditions, so she stood by throughout the night of the 16th; on the early morning of November 17th wind and sea commenced to moderate and the Coast Guard cutter Winona arrived on the scene and in due course succeeded in passing a 12-inch manila hawser to the Herald of the Morning, the other end of which was passed to the Sea Fox, after which the Sea Fox steamed slowly ahead, keeping a strain on said hawser and relieving the strain on the steamer's anchor gear; at this time the Herald of the Morning was lying off Willapa Harbor, Washington; on the early morning of November 18th, the tug Hercules arrived on the scene and attempted to get her steel towing hawser aboard the Herald of the Morning; the Hercules eventually got her hawser aboard said steamer and it became necessary to burn off the

latter's port anchor chain, thereby leaving her without a useable anchor and utterly helpless except for the assistance of the rescuing vessels then in the vicinity; in due course the Sea Fox got under way with the Herald of the Morning in tow by means of a 12-inch manila hawser, in company with the tug Hercules which had a steel hawser made fast to said tow; and they towed said Herald of the Morning to Everett, Washington, where said tow was safely delivered on or about 9:45 p.m. on November 19, 1948; while en route with said tow gales and rough seas were encountered and difficulty was experienced by reason thereof and because of the position of the tow's rudder; the Sea Fox suffered the loss of two steel hawsers of the value of \$5,057.00, and in rendering said service she suffered structural damage which was repaired at a cost of \$2,340.00.

IV.

Upon information and belief, alleges that the salved value of said Herald of the Morning on November 20, 1948, was approximately \$400,000; that the services rendered by the tug Sea Fox and the libelants commencing on November 16, 1948, and ending on the night of November 19, 1948, was salvage service of a high order of merit; they were efficiently and skillfully performed under very trying and difficult conditions and while said steamer was in grave danger; that by reason of the premises, libelants are entitled to a liberal award in such amount as may seem meet and just in the premises,

together with all charges, losses and expenses attending the same.

V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelants pray that process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said respondent and that it be cited to appear and answer under oath all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree to libelant and the master, officers and crew of said tug Sea Fox a liberal salvage award, and that they may have such other and further relief as in law and justice they may be entitled to receive.

/s/ JOSEPH B. McKEON,
McKEON & COLBY,
Proctors for Libelants.

State of California,
City and County of San Francisco—ss.

Ross L. Perkins, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary, of Shipowners & Merchants Towboat Co., Ltd., a corporation, one of the libelants herein, and makes this verification on its behalf; that he has read the foregoing libel for salvage, knows the contents

thereof, and that the same is true to the best of his knowledge, information and belief.

/s/ ROSS L. PERKINS.

Subscribed and sworn to before me this 31st day of October, 1949.

[Seal] /s/ DINAH NEWENBURG,
Notary Public.

My Commission expires January 3, 1951.

[Endorsed]: Filed October 31, 1949.

[Title of District Court and Cause.]

ANSWER TO LIBEL FOR SALVAGE

To the Honorable, the Judges of the Above-Entitled Court:

The answer of Waterman Steamship Corporation, a corporation, respondent, to the libel of Shipowners & Merchants Towboat Co., Ltd., a corporation, owner pro hac vice of the diesel Tug Sea Fox and on behalf of her master, officers and crew in a cause for salvage, civil and maritime, admits, denies and alleges as follows:

I.

Answering unto Article I thereof alleges it has no knowledge or information concerning the allegations therein set forth and calls for strict proof thereof if relevant.

II.

Answering unto Article II thereof, admits that Waterman Steamship Corporation is a corporation organized and existing under and by virtue of the laws of the State of Alabama and at the times mentioned in said libel and on and subsequent to November 8, 1948, was and has been the owner of the American Steamer Herald of the Morning. Alleges that Sudden & Christenson, Inc., a corporation, was and is the agent for respondent in the City and County of San Francisco, State of California. Denies that said respondent has or maintains a place of business in the City and County of San Francisco, State of California. Alleges that said vessel SS Herald of the Morning was a United States Maritime Commission C-2 type vessel of 6214 gross tons, 3508 net tons and 8663 deadweight tons, 435 feet overall length, 63 feet beam and 40 feet 6 inches molded depth. Admits that said vessel was a dead ship without power of propulsion. Alleges that her draft at all times mentioned in said libel was 8 ft. 11in. forward and 17 ft. 3 in. aft. Denies each and all the allegations therein set forth and not herein admitted.

III.

Answering unto Article III thereof, alleges that on November 1, 1948, libelants contracted with Everett Pacific Shipbuilding & Drydock Co. to furnish either the Tug Sea Prince or the Tug Sea Fox and use its best efforts to tow the said SS Herald of the Morning from San Francisco Bay

to Everett, Washington. Thereafter libelants furnished said Tug Sea Fox and on November 5, 1948, her steel towing hawser was shackled on to the starboard anchor chain of the Herald of the Morning, and with the assistance of the Tug Sea Wolf departed from Moore Shipyard, Oakland, with said steamer in tow. Admits that the steel towing hawser of the Tug Sea Fox parted on the afternoon of November 7, 1948. Admits that the Tug Sea Prince arrived in the vicinity of the Herald of the Morning on the afternoon of November 8, 1948, and towed the Herald of the Morning into Drake's Bay, where they arrived on the evening of November 8, 1948. Admits that in Drake's Bay the steel towing hawser of the Tug Sea Prince shackled onto the starboard anchor chain of the tow, and it was thereafter passed to the Sea Fox and thereafter made fast on the towing drum and preparation made to resume the voyage. Admits that the Sea Fox with the Herald of the Morning in tow departed from Drake's Bay about midnight. Admits that the Coast Guard cutter Balsam arrived in the vicinity of the Herald of the Morning on the evening of November 14, 1948, and that said Coast Guard cutter Balsam remained in the vicinity of the Herald of the Morning as alleged in said libel. Admits that the Tug Neptune arrived in the vicinity of the Herald of the Morning at about 2200 on the evening of November 15 and admits that at about 0920 on November 16, 1948, the Tug Neptune, when endeavoring to put a line aboard the Herald of the Morning and solely by reason of the negli-

gence of the Tug Neptune in maneuvering too close to the stem of the Herald of the Morning, was thrown against the stem of the Herald of the Morning, as a result of which she thereafter sank and became a total loss. Alleges that at 1930 on November 16, 1948, the Herald of the Morning dropped her port anchor with slightly more than seven shots of chain, where she continued to lie safely at anchor until 11:15 a.m. on November 18, 1948, when, in tow of the Tug Sea Fox and the Tug Hercules, which latter tug arrived on the morning of November 18, 1948, the Herald of the Morning proceeded on her voyage to Everett, Washington, where she arrived on or about 9:45 p.m. on November 19, 1948. Denies each and all the allegations set forth therein and not herein admitted.

IV.

Answering unto Article IV thereof, alleges that the value of the said Herald of the Morning on November 20, 1948, was approximately \$350,000. Denies each and every, all and singular, the remaining allegations therein contained.

V.

Answering unto Article V thereof, admits that all and singular the premises are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, except as hereinbefore admitted; denies that all and singular or all or singular the premises are true.

Wherefore, respondent prays that libelants take nothing by reason of their libel on file herein for

respondent's costs of suit herein incurred and for such other and further relief as may be proper in the premises.

/s/ CLARENCE G. MORSE,
GRAHAM & MORSE,
Proctors for Respondent.

State of California,
City and County of San Francisco—ss.

F. C. Lawler, being first duly sworn, deposes and says:

That he is an officer, to wit, Secretary, of Sudden & Christenson, Inc., duly authorized agent of Waterman Steamship Corporation, respondent in the above-captioned matter, and as such is authorized and empowered to make and subscribe oaths sworn on behalf of the respondent; that he has read the foregoing Answer to Libel for Salvage, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

/s/ F. C. LAWLER.

Subscribed and sworn to before me this 20th day of January, 1950.

[Seal] /s/ LUCIE M. REINCKE,
Notary Public.

My Commission expires November 19, 1950.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 20, 1950.

In the Southern Division of the United States
District Court for the Northern District of
California

In Admiralty No. 25539-E

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation, on Its Own Behalf
and on Behalf of the Master, Officers and Crew
of the Tug Sea Fox,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Respondent.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Cross-Libelant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation,

Cross-Respondent.

CROSS LIBEL FOR DAMAGES

To the Honorable, the Judges of the Above-Entitled
Court:

The cross-libel of Waterman Steamship Corpora-
tion, a corporation, against Shipowners & Mer-

chants Towboat Co., Ltd., a corporation, in a cause of damage, civil and maritime, alleges:

I.

That cross-libelant (hereinafter called Waterman) is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama. That at all pertinent times and on and subsequent to November 8, 1948, cross-libelant was and is the owner of the American steamer Herald of the Morning; that the said SS Herald of the Morning is a United States Maritime Commission C-2 type vessel of 6,214 gross tons, 3508 net tons and 8663 dead-weight tons, 435 feet overall lengths, 63 feet beam and 40 feet 6 inches molded depth. That at all pertinent times said vessel was a dead ship without power of propulsion and her draft at all pertinent times was 8 feet 11 inches forward and 17 feet 3 inches aft.

II.

That cross-respondent (hereinafter called Ship-owners) is a corporation organized and existing under and by virtue of the laws of the State of California, and at all pertinent times was and is the demise charterer and operator of the Tug Sea Fox; that said Sea Fox is a diesel tug with a length of 126 feet overall, a beam of 28 feet, a depth of 14½ feet and a rated horsepower of 1200.

III.

That under and pursuant to Contract No. MCc-61004, Waterman contracted to purchase the

SS Herald of the Morning from the United States Maritime Commission on an "as-is" basis, the vessel then being located at the 16th Street Pier, WAA Plant, Oakland, California. Subsequently to contracting to purchase the said vessel, the said United States Maritime Commission on behalf of Waterman entered into a contract for the reconversion of the said vessel, being Contract No. MCc-61461, with Pacific Car & Foundry Company doing business as Everett Pacific Shipbuilding and Drydock Company (hereinafter called Everett-Pacific). Under and pursuant to the terms and provisions of said contract for reconversion, Everett-Pacific, acting as an independent contractor and not as agent, agreed to transfer or cause the vessel to be transferred from Oakland, California, to the plant of Everett-Pacific located at Everett, Washington. Thereafter the said vessel was delivered by the United States Maritime Commission and Waterman to Everett-Pacific at Oakland, California, and the said Everett-Pacific employed cross-respondent to tow the said SS Herald of the Morning from Oakland, California, to Everett, Washington. That the tow of the said Herald of the Morning from Oakland, California to Everett, Washington, commenced on or about November 5, 1948, the vessel departing in tow of the tug Sea Fox, then owned and/or chartered by cross-respondent. While at sea on November 6, 1948, the wind picked up to a maximum of force northwest 6, continuing on through November 7, 1948. At 1450, November 7, 1948, the towing wire

of the tug Sea Fox broke and although attempts were made to again put a line from the Herald of the Morning to the tug Sea Fox, this was unsuccessful until 0955 on November 8, in the meantime the weather having moderated to wind force northwest 2. In the meantime the cross-respondent had dispatched the tug Sea Prince from San Francisco to the scene, and on the afternoon of November 8, 1948, the tug Sea Prince towed the Herald of the Morning back to Drake's Bay. In Drake's Bay the steel towing hawser of the tug Sea Prince was shackled onto the starboard anchor chain of the tow, and it was thereafter passed to the Sea Fox and there made fast on the towing drum and preparations made to resume the voyage. The Sea Fox with the Herald of the Morning departed from Drake's Bay about 0100 on November 9th. Thereafter no untoward events occurred until November 14th, when the towing engine clutch on the Sea Fox broke and the towing board was lost. At that time the Sea Fox radioed for assistance and at 2145 on November 14th the Coast Guard Cutter Balsam arrived. The Coast Guard Cutter Balsam remained in attendance throughout November 14th, and on November 15th the tug Neptune arrived at the scene to render assistance. In the early morning of November 16th the towing wire of the tug Sea Fox broke and the Herald of the Morning was thereafter helpless and adrift. On November 16th the tug Neptune, while attempting to get a line aboard the Herald of the Morning and solely be-

cause of the negligent maneuvering of the Neptune, came into collision with the stem of the Herald of the Morning and shortly thereafter the Neptune sank and became a total loss. At about 1830 on November 16th, the Herald of the Morning having drifted into shoaling water, dropped her port anchor and let out a little over seven shots of chain; thereafter the vessel continued to ride safely at anchor until November 17th, when a line was made fast from the tug Sea Fox, and by 0930 on November 18th a line was also made fast from the tug Hercules, which had arrived in the vicinity earlier that morning. Having no means of raising the port anchor, it was necessary to cut the chain with the use of an emergency cutting outfit borrowed from the Coast Guard Cutter Balsam; and thereafter on November 18, 1948, at 1115, the Herald of the Morning, in tow of the tugs Sea Fox and Hercules, proceeded on her voyage toward Everett, Washington, where she arrived at 2145 hours on November 19, 1948.

IV.

That by reason of the foregoing matters and things, suit has been filed in the United States District Court for the Northern District of California, Southern Division, by Puget Sound Tug & Barge Company, a corporation, and Cary-Davis Tug & Barge Company, a corporation, against Waterman Steamship Corporation, No. 25538-H in the files of the Clerk of said Court, wherein and whereby Puget Sound Tug & Barge Company as owner pro

hac vice of the tug Hercules, and Cary-Davis Tug & Barge Company as owner of said tug Hercules, and on behalf of her master, officers and crew, seek to recover "a liberal award" for salvage services "in such amount as may seem meet and just in the premises, together with all charges and expenses attending the same."

V.

That as a result of said towing operation and by reason of the loss of the port anchor and anchor chain of the Herald of the Morning, and by reason of the loss of and damage to the starboard anchor chain, as well as other damages done to the Herald of the Morning during said towage period, Waterman has suffered damages in the amount of \$17,994.00; that although Waterman has made demand upon Shipowners to pay said sum, Shipowners has refused and now refuses to pay said sum or any part thereof, and the whole thereof is now due, owing, payable and unpaid.

VI.

That Shipowners was negligent in the premises in the following respects among others:

(1) That the tug Sea Fox was insufficiently powered and inadequately and defectively equipped for the towage of the Herald of the Morning from Oakland, California, to Everett, Washington, at that time and season of the year.

(2) That the said tug Sea Fox was unseaworthy

in that she was manned with inefficient, careless and negligent master, officers and crew.

(3) That Shipowners was negligent and careless in other and further particulars of which Waterman is not now informed, but when so informed will beg leave to amend this cross-libel if it be so advised.

VII.

That by reason of the premises, Shipowners is liable to Waterman for all loss or damage suffered by Waterman as a result of the claim for salvage hereinbefore referred to in Article IV hereof, as well as counsel fees and costs of suit incurred by Waterman in defense of such litigation. Furthermore, that said Shipowners is liable to Waterman for all loss and damage suffered by Waterman during the tow of said Herald of the Morning hereinbefore referred to in Article V hereof.

VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, cross-libelant prays that process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the said Shipowners & Merchants Towboat Co., Ltd., a corporation, and that it be cited to appear and answer under oath all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree to cross-libelant its damages as herein set forth, and that it may have such other and further

relief as in law and justice it may be entitled to receive.

/s/ CLARENCE G. MORSE,

GRAHAM & MORSE,

Proctors for Cross-Libelant.

State of California,

City and County of San Francisco—ss.

F. C. Lawler, being first duly sworn, deposes and says:

That he is an officer, to wit, Secretary, of Sudden & Christenson, Inc., duly authorized agent of Waterman Steamship Corporation, cross-libelant in the above-captioned matter, and as such is authorized and empowered to make and subscribe oaths sworn on behalf of the cross-libelant; that he has read the foregoing Cross-Libel and knows the same to be true and correct, except as to those matters which are therein stated upon information or belief, and as to those matters he believes the same to be true.

/s/ F. C. LAWLER.

Subscribed and sworn to before me this 20th day of January, 1950.

[Seal] /s/ LUCIE M. REINCKE,
Notary Public.

My Commission Expires November 19, 1950.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 20, 1950.

[Title of District Court and Cause.]

ANSWER OF SHIPOWNERS & MERCHANTS
TOWBOAT CO., LTD., TO CROSS-LIBEL

To the Honorable, The Judges of the Above-entitled
Court:

The answer of Shipowners & Merchants Towboat Co., Ltd., to the cross-libel of Waterman Steamship Corporation on file herein, denies, admits and alleges as follows:

I.

Admits the allegations of Articles I and II of said cross-libel.

II.

Alleges that it is without information or belief sufficient to enable it to answer the allegations of said article beginning with the word "That" on line 26, page 2, down to and including the word "California" on line 13, page 3, thereof; wherefore it calls for proof thereof if material; denies that no untoward event occurred between November 9th, and November 14th, 1948; denies that the Tug Neptune at the time therein alleged came into collision with the stem of the Herald of the Morning by reason of the or any negligence of the Tug Neptune or the or any negligent maneuvers on the part of those in charge of the Tug Neptune; denies that the Herald of the Morning rode safely at anchor after dropping her port anchor as therein alleged; except as herein denied admits the allegations of said article.

III.

Admits the allegations of Article IV of said cross-libel.

IV.

Answering unto the allegations of Article V of said cross-libel, denies each and every, all and singular, the allegations of said article except that it admits the refusal to pay said or any sum to cross-libelant.

V.

Denies each and every, all and singular, the allegations of Article VI of said cross-libel.

VI.

Denies each and every, all and singular, the allegations of Article VII of said cross-libel.

VII.

Except as herein admitted, denies that all or singular the premises set forth in said cross-libel are true.

And by way of an affirmative answer to said cross-libel, cross-respondent alleges:

I.

That in the towage contract referred to in said cross-libel it was agreed that Everett Pacific Shipbuilding & Drydock Company, would make up the tow and cause it to be in all respects sufficient and fit to make the voyage and withstand the perils to be encountered thereon and that it would direct

and be responsible for the method and position in which the tow should be towed and the determination of the time of sailing and that it would man, supply and maintain thereon proper navigation lights and towing gear and make tow lines fast thereon and that this cross-respondent would not be required to make any inspection of the tow before commencing the towage service.

II.

Cross-respondent is informed and believes and upon that ground alleges that said tow the *Herald of the Morning* was insured against marine perils including salvage during the voyage referred to in said cross libel and that as a condition of the attachment of said risk the hull underwriters on said tow required said tow and the towing tug to be passed upon and approved by, and satisfactory to, a surveyor to the Board of Marine Underwriters of San Francisco, or a surveyor to the United States Salvage Association; that a surveyor to both of said organizations was so employed and that he in due course passed upon and approved as satisfactory said tow and tug for the voyage aforesaid.

III.

That in said towage agreement it was further agreed that this cross-respondent would be made an additional assured in the hull policies on said tow and that it would have the benefit of such insurance and that hull underwriters would waive any right of subrogation against it. Upon informa-

tion and belief, cross-respondent alleged that it, together with Waterman Steamship Corporation and Everett Pacific Shipbuilding & Drydock Company, was and is a party insured by said policies and that said hull underwriters have waived subrogation against it.

IV.

That the defense of the libel herein and the prosecution of the cross libel herein in the name of respondent Waterman Steamship Corporation is in fact for and on behalf of said hull underwriters.

Wherefore, cross-respondent prays that said cross-libel be dismissed with costs.

/s/ JOSEPH B. McKEON,

McKEON & COLBY,

Proctors for Cross-
Respondent.

State of California,

City and County of San Francisco—ss.

Ross L. Perkins, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary, of Shipowners & Merchants Towboat Co., Ltd., a corporation, one of the libelants herein, and makes this verification on its behalf; that he has read the foregoing answer to cross-libel, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

/s/ ROSS L. PERKINS.

Subscribed and sworn to before me this 24th day of March, 1950.

[Seal] /s/ LUCIE M. REINCKE,
Notary Public.

My commission expires November 19, 1950.

Interrogatories Propounded to Respondent and
Cross-Libelant Waterman Steamship Corpora-
tion, Which It Is Required to Answer Under
Oath

1. Please state each respect or particular in which the Tug Sea Fox was inadequately or defectively equipped as alleged in subdivision 1 of Article VI of the cross-libel.

2. Please state each respect or particular in which each of the master, officers and crew of the Tug Sea Fox was inefficient, careless or negligent as alleged in subdivision 2 of Article IV of the cross-libel.

3. Who selected and determined the date and the time for the departure of the Herald of the Morning from Oakland, California, on the voyage referred to in the cross-libel.

4. Describe each respect or particular in which the Tug Neptune was negligently maneuvered as alleged in Article III of said cross-libel.

5. Was the Herald of the Morning insured on

the voyage referred to in the cross-libel against marine risks including salvage?

6. If you answer the last preceding interrogatory in the affirmative, please name the parties who were insured by such insurance.

7. Is it not a fact that a surveyor to the Board of Marine Underwriters of San Francisco, and the United States Salvage Association, for and on behalf of underwriters of the Herald of the Morning, passed upon and approved as satisfactory the tug and tow for the voyage mentioned in the cross-libel?

/s/ JOSEPH B. McKEON,

McKEON & COLBY,

Proctors for Cross-
Respondent.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 27, 1950.

[Title of District Court and Cause.]

AMENDMENT TO LIBEL

Comes now Shipowners & Merchants Towboat Co., Ltd., a corporation, and amends its libel on file herein in the following respects:

1.

Strike out the last sentence of Article 1 com-

mencing with the words "said Tug" on line 3, page 2, thereof, and add in lieu thereof the following:

"The master, officers and crew of said Tug Sea Fox, appearing for their own interests herein, at all times herein mentioned were: Rudolph T. Sommer, James Reichel, Charles J. Harris, Gysbert Oliemans, Friedrich J. Ruyters, Cornielis Vanderboon, Theodore Slowikow, Charles J. Olsen, Arthur V. Joudrey, Giocondo Ceccato, William Schmidt and Jerry M. Delmas."

/s/ JOSEPH B. McKEON,

McKEON & COLBY,

Proctors for Libelants.

It is stipulated that verification to the foregoing amendment is waived and that said amendment may be filed herein.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Respondent.

[Endorsed]: Filed October 5, 1950.

[Title of District Court and Cause.]

AMENDMENT TO ANSWER TO LIBEL
FOR SALVAGE

To the Honorable, The Judges of the Above-entitled
Court:

The answer of Waterman Steamship Corporation, a corporation, respondent, to the libel of Shipowners & Merchants Towboat Co., Ltd., a corporation, owner pro haec vice of the Diesel Tug Sea Fox, and on behalf of her master, officers and crew in a cause for salvage, civil and maritime, admits, denies and alleges as follows:

I.

Answering unto Article I thereof as amended by said Amendment to Libel, alleges it has no knowledge or information concerning the allegations therein set forth and calls for strict proof thereof if relevant.

II.

Realleges and reasserts each and all of the remaining allegations of the Answer to Libel for Salvage heretofore filed herein.

Wherefore, respondent prays that libelants take nothing by reason of their libel and amendment to libel on file herein, for respondent's cross-suit herein incurred and for such other and further relief as may be proper in the premises.

GRAHAM & MORSE,
/s/ CLARENCE G. MORSE,

Proctors for Respondent and
Cross-Libelant.

It is stipulated that verification to the foregoing amendment is waived and that said amendment may be filed herein.

/s/ JOSEPH B. McKEON,
McKEON & COLBY,
Proctors for Libelants.

[Endorsed]: Filed November 15, 1950.

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF SHIP-
OWNERS & MERCHANTS TOWBOAT CO.,
LTD., TO CROSS-LIBEL AND INTER-
ROGATORIES PROPOUNDED TO CROSS-
LIBELANT

Comes now Shipowners & Merchants Towboat Co., Ltd., a corporation, and amends its answer to the cross-libel on file herein in the following respects:

I.

Add to page 4 thereof before the prayer the following:

And by way of a second affirmative defense to said cross-libel, cross-respondent alleges:

1.

Cross-respondent is informed and believes and upon that ground alleges that cross-libelant and

Everett Pacific Shipbuilding & Drydock Company and the United States of America were expressly named as assureds in a marine policy of insurance on the hull of the *Herald of the Morning* at all times mentioned in the libel on file herein; that said policy insured against marine perils including salvage during the voyage referred to in said cross-libel and that the cost of such insurance was for the account of cross-libelant; that cross-libelant and Everett Pacific Shipbuilding & Drydock Company, before issuance of said policy of insurance and the commencement of said voyage, had entered into an agreement whereby Everett Pacific Shipbuilding & Drydock Company was relieved from any liability for loss of or damage to said vessel during said voyage; that it was understood and agreed between said parties that they would look only to said insurance policy for any loss of or damage to said vessel during said voyage and that Everett Pacific Shipbuilding & Drydock Company would enter into a towage contract with a tugboat company containing a provision extending to the tugboat company by way of waiver of subrogation, or otherwise, the full benefit of said policy of insurance; that pursuant to such understanding and agreement and with the consent of cross-libelant and the knowledge of the insurers issuing said policy, said Everett Pacific Shipbuilding & Drydock Company, on its own behalf and for the benefit of cross-libelant, entered into a towage contract with cross-respondent which expressly extended to cross-respondent the full benefit of said policy of insurance;

that said towage contract was signed by Sudden & Christenson, Inc., as agent for Everett Pacific Shipbuilding & Drydock Company and that said Sudden & Christenson, Inc., also was the Pacific Coast Agent for said cross-libelant; that said policy of insurance expressly fixed an additional premium for the waiver of subrogation against cross-respondent and the extension of the benefit of said insurance to it; that cross-libelant was obligated to pay said additional premium and cross-respondent on information and belief alleges that said additional premium was paid to the insurers issuing said policy of insurance, the benefit of which respondent hereby claims.

/s/ JOSEPH B. McKEON,
McKEON & COLBY,
Proctors for Libelants.

It is stipulated that verification to the foregoing amendment is waived and that said amendment may be filed herein.

GRAHAM & MORSE,
/s/ CLARENCE G. MORSE,
Proctors for Respondent.

Interrogatories Propounded to Cross-Libelant Waterman Steamship Corporation Which It is Required to Answer Under Oath

1. Is it not a fact that the policy of insurance on the Herald of the Morning on the voyage

referred to in the cross-libel provided for the payment of an additional premium for the release of cross-respondent's towing tug from liability for any loss of or damage to the Herald of the Morning on said voyage or for the waiver of subrogation by the insurers against cross-respondent and its tug?

2. If you answer the preceding interrogatory in the affirmative, please state whether or not said additional premium for such release or waiver of subrogation has been paid to the insurers insuring the Herald of the Morning on the voyage referred to in the cross-libel.

3. If said premium has not been paid, please state whether or not it is owing to the insurers or whether or not any arrangement has been made for its payment to them at any future time.

4. Did you enter into an agreement with Everett Pacific Shipbuilding & Drydock Company relieving the latter from liability for any loss of or damage to the Herald of the Morning during the voyage referred to in the cross-libel?

5. Is it not a fact that before the commencement of the voyage referred to in the cross-libel Everett Pacific Shipbuilding & Drydock Company had entered into a towage contract with cross-respondent which expressly provided that cross-respondent would directly or indirectly have the benefit of the insurance on the Herald of the Morning on said voyage either by way of a waiver of subrogation against it, or otherwise?

6. Was it understood and agreed between you and Everett Pacific Shipbuilding & Drydock Company that the cost of the insurance on the *Herald on the Morning* on said voyage would be for your account?

7. Is it not a fact that the contents of the towage contract between Everett Pacific Shipbuilding & Drydock Company and cross-respondent were made known to the insurers issuing said policy of insurance or their agents or representatives before said voyage commenced?

8. Is it not true that before said policy was issued you or your representatives gave a full disclosure to said insurers of the arrangements made regarding, and the terms and conditions of, the contract for the towage of the *Herald of the Morning* on the voyage referred to in the cross-libel.

/s/ JOSEPH B. McKEON,
McKEON & COLBY,
Proctors for Cross-
Respondent.

[Endorsed]: Filed December 6, 1950.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 25538

PUGET SOUND TUG & BARGE COMPANY
a Corporation; and CARY-DAVIS TUG &
BARGE COMPANY, a Corporation,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Respondent.

No. 25539

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation, on Its Own Behalf
and on Behalf of the Master, Officers and Crew
of the Tug Sea Fox,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Respondent.

Actions seeking to recover award for salvage of
respondent's vessel. Judgment in accordance with
opinion.

Joseph B. McKeon and McKeon & Colby, all of
San Francisco, California, proctors for libelants.

Clarence G. Morse, Francis Tetreault, and Gra-

ham & Morse, all of San Francisco, California, proctors for respondent.

MEMORANDUM OPINION

Roche, Chief Judge:

By these two actions, which were consolidated for trial, the libelants seek to recover an award for the alleged salvage of respondent's vessel, the SS *Herald of the Morning*, by the tugs *Sea Fox*, *Neptune* and *Hercules*.

The litigation grows out of the following facts, as disclosed by the record.

At all pertinent times the respondent Waterman Steamship Corporation (hereinafter called "Waterman") was the owner of the American steamer *Herald of the Morning* (hereinafter called "Herald"), which it had purchased from the United States Maritime Commission for reconversion to a cargo vessel. Subsequent to the contract of purchase, the Maritime Commission on behalf of Waterman entered into a contract for the reconversion of the *Herald* with Pacific Car & Foundry Company doing business as Everett Pacific Shipbuilding and Drydock Company (hereinafter called "Everett-Pacific"), under the terms of which Everett-Pacific agreed to have the vessel transferred from Oakland, California, to its yards at Everett, Washington. Pursuant to this contract provision Everett-Pacific entered into a towage agreement with libelant Shipowners & Merchants Towboat Co., Ltd. (hereinafter called "Shipowners"), as the

chartered owner and operator of the Tug Sea Fox. The Sea Fox is a diesel tug with a length of 126 feet overall, a beam of 28 feet, a depth of 14½ feet and a rated horsepower of 1200. The Herald is a C-2 type vessel of 6,214 gross tons, 3508 net tons and 8663 deadweight tons, 435 feet overall length, 63 feet beam and 40 feet, 6 inches molded depth. At all pertinent times said vessel was a dead ship without power of propulsion, with a draft of 8 feet, 11 inches forward and 17 feet, 3 inches aft.

The towage contract released Shipowners from liability for loss or damage arising from faults or errors in the navigation or management of the tug or tow and it further provided that Shipowners should be named as an additional assured in Everett-Pacific's insurance policy covering the tow. If this was not done, Everett-Pacific agreed to assume the risk, including any liability of Shipowners which could be covered by insurance. It does not appear from the record that Shipowners was so named.

The Herald was covered by a policy of insurance which included salvage among other risks and in which Waterman and Everett-Pacific were the named assureds. The policy recited the towing tug's release from liability and the consequent charge of a higher premium rate, which was paid. Another provision required that the vessel, tug and all towing arrangements be approved by the United States Salvage Association. Such approval was given with the proviso that during the trip advantage should

be taken of favorable weather to the extent possible.

The Herald, carrying a crew of sixteen men, left San Francisco Bay in tow of the Sea Fox on November 5, 1948. She was without cargo, without power to handle any of her gear, and had only her port anchor available for use, the starboard anchor chain having been shackled to the steel towing hawser. This tow wire parted on November 7th and on the following day the Sea Fox succeeded in passing its spare full length tow wire to the Herald. This, however fouled on the winch drum of the tug's towing engine and had to be cut off and dropped into the sea. The fair lead traveler also had to be removed from the winch because of damage. Ship-owners was advised of the situation and sent a second tug, the Sea Prince, which took the Herald in tow. The three vessels put into Drake's Bay where the Sea Prince passed its tow wire to the Sea Fox and on November 9th the tug with the Herald in tow again headed northward.

There was no further mishap until November 13th, although the log of the Sea Fox records some squally weather and the fact that the tow was shearing badly. In this connection it must be remembered that the Herald was a large unloaded ship, riding high in the water, and presenting a perfect target for the wind. During the night of the 13th and on the 14th the tug and tow encountered increasingly heavy weather; the towing board that had been placed on the tug's stern to keep the tow wire from chafing went overboard; the towing en-

gine's gears carried away and emergency measures had to be used to halt the winch drum and thus prevent the tow wire from paying out. A strong wind and heavy seas increased the strain on the line and late on the 14th the Sea Fox radioed for assistance, then headed out to sea to ride out the storm.

The cutter Balsam from the Astoria Coast Guard station reached the scene about eight o'clock that night and the tug Neptune, which was proceeding up the coast to Seattle, arrived the following evening. The Neptune made several unsuccessful attempts to put a line aboard the Herald from the lee side, finally desisting because of the danger that the ship would drift down on her. The storm had increased to a whole gale and early in the morning of November 16th the tow wire between the Sea Fox and the Herald parted, carrying with it the preventer wire which had been attached sometime before in an effort to ease the strain on the towing machine. With no motive power of her own the Herald soon lay broadside to the wind and began to drift in a northeasterly direction toward the shore about forty miles distant.

After daybreak the Neptune again approached the Herald from the lee side but was unable to get in close enough without danger of being run down. She then approached the drifting ship's bow from the windward side and after considerable maneuvering succeeded in picking up a light line attached to life rings thrown from the Herald but the ves-

sel's crew, which had to pull the line in by hand, was unable to lift the steel pendant to which the tow wire was attached over the lip of the ship's chock. The crew continued their efforts for about an hour, during which time the Neptune maneuvered as close as she dared in order to lessen the weight and drag of the steel pendant and hawser. Suddenly a great sea struck the Neptune when her bow was about 75 feet distant from the bow of the Herald and drove her right at the Herald's stem. At the same time the force of the same sea lifted the Herald and when she came down her stem knifed through the starboard side of the Neptune, inflicting a mortal wound. It soon became evident that she could not be saved and orders were given to abandon ship. One of her officers fell overboard and died, apparently from a heart attack. The Balsam took the remaining officers and men on board, then followed the drifting Herald after instructing the tug Sea Fox to stand by the Neptune. The Sea Fox remained with the sinking tug until she went down some five hours later, then proceeded as fast as she could for the Herald. In the meantime the Balsam had got her ten inch manila hawser on the Herald but it soon parted in the storm and the ship continued to drift in toward shore, which it was estimated she would strike about midnight.

By the time the Sea Fox reached the Herald she had come into shoal water and the Balsam radioed the tug to instruct the Herald to drop anchor. At first the Herald failed to let out enough chain. The Sea Fox then instructed her to let out

about 9 shots and after this had been done, the anchor apparently held. It was now dark and the attempt of the Sea Fox to shoot a line to the Herald with a Lyle gun failed, the crew evidently missing it in the darkness.

By early morning of the 17th, when the Coast Guard Cutter Winona arrived on the scene, the weather had moderated.

At the suggestion of the Sea Fox, the Winona passed one end of her 12 inch manila hawser to the Herald and the other end to the Sea Fox and the tug then moved out ahead of the anchored ship and kept her engines going ahead in order to ease the strain on the Herald's anchor chain and gear. The Balsam now left the scene to take the Neptune's crew to Astoria, Oregon, but later returned. The Winona remained until after the Tug Hercules, which had been summoned from Seattle, arrived early on the morning of November 18th.

The Hercules passed her tow wire to the Herald. Both tugs were soon in difficulty because in their effort to keep far enough apart to avoid collision they broached broadside to the wind and were carried toward the Herald's stern. During this time the Herald's crew endeavored, unsuccessfully, to slip her anchor and finally had to cut the anchor chain with an acetylene torch borrowed from the Balsam. The Sea Fox and the Hercules succeeded in forging ahead of the Herald and commenced towing her, accompanied by the Balsam. They reached Everett, their destination, on the evening

of November 19th and the Hercules then returned to Seattle, arriving about one o'clock on the morning of the 20th.

The first question for decision is whether the foregoing facts show a case of salvage. If they do, the court must then fix the award and determine the extent to which each vessel is entitled to participate, if at all.

To constitute salvage of a vessel she must be in impending peril of the sea from which she is rescued by the voluntary efforts of others. Whether the Herald was in such peril after her tow wire parted shortly after midnight on November 16th is a question of fact and the court believes that the evidence shows conclusively that she was. Respondent Waterman attempts to minimize the danger by stressing the fact that the ship was able to anchor in shoal water and that her anchor held. The record discloses, however, that during the period when the Herald was being held only by her anchor the weather had moderated and was relatively calm. By the time the wind and seas began to increase in force the Sea Fox had a line on the Herald and by keeping her engines going ahead she materially eased the strain on the Herald's anchor chain. Furthermore, another heavy storm blew up on the night of the 18th and there is credible testimony that the vessel's single anchor probably would not have been sufficient to keep her from being blown ashore where she would have become a total loss. It was only through the efforts of the Sea Fox and the Her-

cules, assisted by the two Coast Guard cutters, that the *Herald* was rescued from her position of peril and towed safely to her destination.

The Court concludes, therefore, that the *Herald* was salvaged and it remains to fix the award and each vessel's proportionate share. "Salvage" is compensation which includes the element of reward for voluntarily performing a meritorious service. It has long been favored by public policy as important to the safety of lives and property at sea. In fixing the amount of the award the court must consider not only the value of the property saved and the degree of danger from which it was rescued but also the value of the salvors' property used in the operation, the risk to which it was exposed, the labor expended by the salvors and the risk incurred by them, and the promptitude, skill and energy displayed in rendering the service.

The record discloses that the *Herald* had a fair market value somewhere between \$1,054,000, the sum for which she was insured for the voyage, and \$375,000 which, it was testified, was the very minimum value that could be placed on her. The three tugs had a combined value of \$400,000. Their respective values, as stipulated, were: *Neptune*, \$150,000; *Sea Fox*, \$125,000; *Hercules*, \$125,000. The service was performed under hazardous conditions. Not only was one tug lost but there is evidence that the men on the *Sea Fox* were frequently in danger of being swept overboard by the heavy seas. That the service was rendered with promptness,

skill and energy is apparent from the facts heretofore recited. In view of all the evidence, therefore, the court estimates that the total salvage should be considered at the sum of \$60,000.00, provided all the salvors who rendered service claimed and were entitled to claim pay for their services. The Coast Guard cutters Winona and Balsam, however, have not claimed, nor are they entitled under the law to claim any pay for their share in the operation. These two Government vessels rendered a substantial contribution which the Court fixes at one-fourth of the salvage service and which must be taken into account in fixing the salvage award. *United States v. Central Wharf Towboard Co.*, 8 F. 2d 250. Therefore the Court fixes the total salvage award at the sum of \$45,000.00, to be divided among the participating tugs in the proportion indicated in the discussion of their respective claims.

Sea Fox

Respondent Waterman resists the claim of the Sea Fox on grounds that may be summarized as (1) the Sea Fox did only what she was bound to do under her towage contract, and (2) any position of danger in which the Herald was placed resulted from the fault of Shipowners and the tug.

Whether a towage contract should be held superseded by the right to salvage depends upon all the facts and circumstances of the particular case viewed in the light of the applicable principles of law. The classic statement of these principles is found in *The Minnehaha*, Lush .335, 15 Eng. Rep.

444, 451, still the leading case on the subject, in which the Privy Council held: "She (the towing vessel) may be prevented from fulfilling her contract by vis major, by accidents which were not contemplated and which may render the fulfilment of her contract impossible; and in such case, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task; because the performance of the task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser. But if in the discharge of this task, by sudden violence of wind or waves, or other accidents, the ship in tow is placed in danger, and the towing-vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services if the ship be saved, and may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage."

In the instant case the salvage claim is not based on the mere breaking of the tow wire. It is based on the efforts of the *Sea Fox* in pursuing and ultimately rescuing, with assistance, the *Herald* after the ship had been set adrift by the storm and blown into a position of danger. Respondent argues that strong winds and heavy seas are apt to be encountered along the North Pacific coast in the month of November and that, therefore, they must have

been in contemplation of the parties to the towage contract. If this argument were sustained it would mean that a tug would be held strictly to its contract no matter how extraordinary and hazardous its efforts to save its tow imperilled by the violence of wind or waves. The Court does not believe that such a holding would be consonant with maritime policy or with the legal principles set forth above. Accordingly, the Court holds that the facts in this case warrant allowing the *Sea Fox* to claim as a salvor. The only remaining question is whether her claim is barred because of fault or negligence.

Respondent Waterman alleges that the *Sea Fox* was negligent in that her towing equipment was defective; she was carelessly navigated and manned by officers inattentive to their duties; she failed to put into a port of refuge, specifically the Columbia River, after receiving storm warnings; she should not have left Drake's Bay without a full length "insurance" tow wire on board; and she was guilty of statutory fault in that Captain Sommer, her master, did not have an unlimited master's license.

These allegations, save that of statutory fault, involve questions of fact and the court does not find them supported by the record. There is no doubt that the *Sea Fox* did receive storm warnings but there is no testimony that any "port of refuge" was available. On the other hand, four experienced tug masters testified that the weather conditions from November 13th through the 16th were such that it would not have been feasible for the tug to try to

take the Herald across the Columbia River Bar. Under all the circumstances it was but good seamanship for the Sea Fox to head out to sea to try to ride out the storm. Nor does the record disclose in what way having an extra full length tow wire on board would have enabled the Sea Fox to do anything she did not do, since the storm that caused the towwire to part also made it impossible to get any line aboard the Herald.

The allegation of statutory fault involves the question of burden of proof. Respondent Waterman asserts that under the so-called "Pennsylvania Rule" the burden is on the Sea Fox to prove that Captain Sommer's lack of an unlimited master's license not only did not, but could not have contributed to placing the Herald in danger. This rule stems from *The Pennsylvania* (1873) 86 U. S. 125, a collision case in which the Supreme Court stated that the navigation rule violated by one of the vessels was one intended to prevent collisions and hence it was no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. The Court then went on to hold that in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Since this decision the rule has been applied in a number of cases in which there was an apparent causal connection between the statutory violation and the disaster. See, for example, *The Denali*, 112 F. 2d. 952,

been in contemplation of the parties to the towage contract. If this argument were sustained it would mean that a tug would be held strictly to its contract no matter how extraordinary and hazardous its efforts to save its tow imperilled by the violence of wind or waves. The Court does not believe that such a holding would be consonant with maritime policy or with the legal principles set forth above. Accordingly, the Court holds that the facts in this case warrant allowing the *Sea Fox* to claim as a salvor. The only remaining question is whether her claim is barred because of fault or negligence.

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take the Herald across the Columbia River Bar. Under all the circumstances it was but good seamanship for the Sea Fox to head out to sea to try to ride out the storm. Nor does the record disclose in what way having an extra full length tow wire on board would have enabled the Sea Fox to do anything she did not do, since the storm that caused the towwire to part also made it impossible to get any line aboard the Herald.

The allegation of statutory fault involves the question of burden of proof. Respondent Waterman asserts that under the so-called "Pennsylvania Rule" the burden is on the Sea Fox to prove that Captain Sommer's lack of an unlimited master's license not only did not, but could not have contributed to placing the Herald in danger. This rule stems from *The Pennsylvania* (1873) 86 U. S. 125, a collision case in which the Supreme Court stated that the navigation rule violated by one of the vessels was one intended to prevent collisions and hence it was no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. The Court then went on to hold that in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Since this decision the rule has been applied in a number of cases in which there was an apparent causal connection between the statutory violation and the disaster. See, for example, *The Denali*, 112 F. 2d. 952,

a 1941 decision of the Court of Appeals for the Ninth Circuit, where the statutory three-watch provision for mates was being violated at the time errors in navigation caused the vessel to be stranded. The Court held that the rule and presumption of the Pennsylvania case controls in libels for injury to sailors or cargo where the vessel has violated the positive command of a safety statute to prevent fatigue in the navigating officer controlling her navigation at the time the navigation caused the injury, whether by colliding with another vessel or with a reef on which she strands. Similar cases are *Belden v. Chase*, 150 U. S. 674 (vessel which sank as the result of a collision had violated certain statutory passing rules); *Material Service*, 1937 A.M.C. 925 (vessel sank after being rendered unseaworthy by the cutting of holes in the hatch covers in violation of certain rules and regulations having the force of statutes); *The Eagle Wing*, 135 F. 826 (collision, the vessel at fault being navigated by an unlicensed mate); *Martin Marine Transportation Co. v. U. S.*, 183 F. 2d. 676 (collision involving barges not carrying a full complement in crews, in violation of certain statutes). The Court has found no application of the rule to a factual situation like the one here presented. Furthermore, the record discloses that the *Sea Fox* was officered by Capt. Reichel and Mate Harris as well as Capt. Sommer. Capt. Reichel had an unlimited master's ocean going license and Mr. Harris, the second mate, had an unlimited chief mate's ocean going license. All three were experienced and competent men.

Assuming, however, that in this case the rule is applicable, the burden of proof has been carried because the evidence clearly shows that the *Herald* was set adrift and carried into a position of danger solely by the violence of the storm.

The Court concludes, therefore, that the *Sea Fox* was free from fault or negligence and is entitled to share in the salvage award to the extent of fifty-five per cent, or the sum of \$24,750.00.

Neptune

Respondent *Waterman* contends that not only did the *Neptune* give no actual assistance to the *Herald* but that she was lost through her own negligence in approaching the ship from the windward side. The record discloses, however, that she attempted repeatedly to come in from the lee side, attempts that were made extremely hazardous by the danger of the *Herald* drifting down on her. Her windward approach was a last resort in her effort to help the drifting vessel. That it ended disastrously was not due to negligence on her part. It resulted from her persistence in attempting to aid the *Herald's* crew in their effort to haul on board the tug's tow wire which she had succeeded in attaching to a messenger line from the ship. Their effort was unsuccessful but through no fault of the *Neptune*.

Ordinarily a vessel can share in a salvage award only if she has contributed to the successful salvage operation. Where, as here, however, a vessel that does so contribute and the vessel whose attempted

contribution has failed belong to the same owner there is, in effect, a joint salvage operation and both are entitled to participate in the award. *The Flottbek*, 118 F. 954; *Atlantic Transport Co. v. U. S.*, 42 F. 2d. 583. Here libellant Puget Sound Tug & Barge Company was the owner of the *Neptune* and chartered owner of the *Hercules*. While the monetary loss of the *Neptune* is not an allowable item as such in computing the amount of the award, her loss does make certain the existence of the danger to which she was subjected and the item of recovery due to peril may be approximately measured by it. *The Alabama*, 280 F. 738.

In view of the foregoing the Court determines that an allowance to the *Neptune* interests of twenty-two and one-half per cent of the award, or \$10,125.00, would be proper.

Hercules

The *Hercules* was dispatched to the aid of the *Herald* from Seattle, arriving in the early morning of November 18th. She got her tow wire to the ship while it was at anchor and she and the *Sea Fox* towed the vessel to Everett. While she did not encounter as great danger as did the *Sea Fox* and the *Neptune*, nevertheless there were heavy seas and strong winds on the 18th and she was subjected to considerable hazard. Her efforts were voluntary and materially aided the rescue of the *Herald*. Under these circumstances the Court feels that she should share in the award to the extent of twenty-two and one-half per cent, or \$10,125.00.

There remains for disposition respondent Waterman's cross-libel against Shipowners in case No. 25,539. This proceeds on the ground that because of its alleged negligence, Shipowners is ultimately liable to Waterman for all salvage claims and for damage sustained by the Herald. The Court's finding of no negligence disposes of the cross-libel and it will be dismissed. However, even if the Court had found otherwise the cross-libel would be dismissed since the record discloses that the towage contract between Shipowners and Everett-Pacific released the tug from liability and that with knowledge of this provision Waterman procured insurance likewise releasing the tug from liability and paid therefor the higher premium rate.

In view of the foregoing it is, therefore, by the Court

Ordered that there be entered herein, upon findings of fact and conclusions of law, a decree in favor of libelants for an aggregate salvage award in the sum of \$45,000.00, said award to be divided as follows: \$20,250.00 to Puget Sound Tug & Barge Company and Cary-Davis Tug & Barge Company on their own behalf and on behalf of the masters, officers and crew of the Tugs Neptune and Hercules, of which \$2,532.00 is fixed as the proportion due the master, officers and crew of the Tug Neptune and of which \$2,532.00 is fixed as the proportion due the master, officers and crew of the Tug Hercules to be divided between them in proportion to

their wages at the time of the rendition of the salvage service; and \$24,750.00 to Shipowners & Merchants Towboat Co., Ltd., and Tug Sea Fox, Inc., on their own behalf and on behalf of the master, officers and crew of the Tug Sea Fox, of which \$6,188.00 is fixed as the proportion due the master, officers and crew of the said Tug Sea Fox to be divided between them in proportion to their wages at the time of the salvage service.

Further Ordered that the cross-libel heretofore filed in case No. 25,539 be and the same hereby is Dismissed.

Further Ordered that the libelants recover their costs.

Dated: June 5th, 1951.

/s/ MICHAEL J. ROCHE,
Chief United States District
Judge.

[Endorsed]: Filed June 5, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause, which was consolidated for trial with case No. 25,538 entitled Puget Sound Tug & Barge Company, et al., v. Waterman Steamship Corporation, came on regularly for hearing on January 17th, 18th and 22nd, 1951, before the Honorable Michael J. Roche, United States District Judge. Messrs. Joseph B. McKeon, Esq. and Henry V. Colby, Esq. appeared as proctors for libelants; Messrs. Graham & Morse by Clarence G. Morse, Esq. and Francis L. Tetreault, Esq. appeared as proctors for respondent Waterman Steamship Corporation. The cause was duly heard upon the pleadings and upon the evidence, both oral and documentary, and upon oral and written stipulations herein. The cause was thereupon submitted upon written briefs which the court has fully considered together with the said pleadings and proofs and, the court having filed an opinion herein and being now fully advised in the premises, makes the following findings of fact and conclusions of law.

Findings of Fact

The court finds that:

I.

Libelant Shipowners & Merchants Towboat Co., Ltd., is now and at all times herein mentioned has

been a corporation existing under and by virtue of the laws of the State of California and at all times herein mentioned was the bareboat or demise charterer of the diesel tug Sea Fox; it maintained, operated and navigated said tug at its own expense; that libelant Tug Sea Fox, Inc., is now and at all times herein mentioned has been a corporation existing under and by virtue of the laws of the State of California and at all times herein mentioned was the owner of the diesel tug Sea Fox.

II.

That respondent Waterman Steamship Corporation is now and at all times herein mentioned has been a corporation existing under and by virtue of the laws of the State of Alabama; that at the time of the rendition of the herein mentioned salvage services to the steamer Herald of the Morning, hereinafter called "Herald," said steamer was owned by Waterman Steamship Corporation.

III.

At all pertinent times the tug Sea Fox was an ocean going diesel tug of 282 gross registered tons and a rated horsepower of 1200, having a fair market value of \$125,000; that the Herald is a C-2 type of cargo vessel of 8663 dead weight tons, with an over-all length of 435 feet, with a beam of 63 feet and a molded depth of 40 feet 6 inches; she was without cargo or ballast and was drawing 8 feet 11 inches forward and 17 feet 3 inches aft; in such condition she sat high in the water and was a broad

target for the wind; at the time of the completion of the salvage services herein mentioned the Herald had a value of somewhere between \$1,054,000.00, the sum for which she was insured for the voyage, and \$375,000.00, which it was testified was the very minimum value that could be placed on her; that if the Herald had not been saved respondent would have been obliged to pay her purchase price of \$957,818.00; that said steamer at all times herein mentioned was a dead ship without power of propulsion or any power to handle her anchors, gear, life boats, equipment or towing hawser; that she had a single anchor available for use but that anchor was lost before the tug Hercules, with the tug Sea Fox, got under way with her in tow on November 18, 1948. She had on board a master, 3 officers and a crew of 12.

IV.

On or about November 1st, 1948, libelant Shipowners & Merchants Towboat Co., Ltd., was engaged to furnish the Tug Sea Fox and use its best efforts to tow the Herald from San Francisco Bay to Everett, Washington; on November 5th her 13¼-inch towing hawser was shackled on to the starboard anchor chain of the Herald and, with the assistance of the tug Sea Wolf, departed from Oakland with the Herald in tow; enroute the wind was blowing the Herald forward and abreast of the tug on many occasions and she was frequently sheering and falling off into the trough of the sea; wind and seas continued to increase and both vessels were pitching

heavily, all of which required the tug to throttle down speed on her engine; on November 7th the towing hawser parted and thereafter the Sea Fox succeeded in passing her spare steel hawser to the Herald; this hawser fouled on the winch drum of the towing engine and had to be severed and all but 600 feet of it was dropped overboard; this accident also damaged and made useless the fair lead traveler on the winch drum; this traveler is a device used when the steel hawser is wound in and it serves to guide the wire into place on the winch drum; Shipowners & Merchants Towboat Co., Ltd., dispatched the tug Sea Prince from San Francisco which took the Herald in tow and the three vessels put into Drakes Bay where the 13¼-inch steel hawser of the Sea Prince was secured aboard the Herald and the other end thereof passed to the Sea Fox, and on November 9th the Sea Fox with the Herald in tow resumed the voyage northward.

V.

After proceeding about two-thirds of the distance to Everett, during which the Herald was sheering badly through no fault of the tug Sea Fox, the weather and seas increased greatly and the heavy gears on the winch drum of the tug's towing engine carried away; this permitted the towing hawser to pay out so emergency measures were attempted to prevent the winch drum from turning and thereby permitting the hawser to pay out; the towing board on the tug's stern, which is designed to prevent the hawser from chafing, went overboard; with the wind

and seas increasing in intensity, the strain on her hawser and towing engine were greatly increased and the Sea Fox radioed for assistance and then headed further out for sea to ride out the storm and make the distance to shore greater thereby affording a better opportunity of rescue if the hawser parted and the Herald went adrift; a preventer wire had been placed in position in an effort to ease the strain on the towing hawser and the towing engine; the Coast Guard Cutter Balsam reached the scene about 8:00 p.m. on November 14th and the tug Neptune, on a voyage to Seattle, arrived on November 15th; the Neptune made several attempts without success to put a line aboard the Herald from the lee side; the storm increased to a whole gale with raging seas and shortly after midnight on the 15th at the height of the storm the towing hawser parted and the Herald went drifting off in the night; without motive power she lay broadside to the wind and began to drift northeasterly toward shore which was then estimated to be about 40 miles distant; being advised of the parting of the hawser of the Sea Fox, the Neptune together with the Sea Fox, put out after the drifting Herald; after day-break on the 16th the Neptune made every effort to get a line aboard the drifting Herald from the lee side but was unable to get close enough without danger of being run down; the Neptune approached the Herald's bow from the windward and after considerable maneuvering she succeeded in getting the end of a wire pendant attached to her 1¾-inch steel

hawser up to the chock of the Herald but the latter's crew, which had to pull the pendant and hawser in by hand, was unable to lift the pendant over or through the steamer's chock so that it might be secured aboard their vessel; the crew continued their efforts for about an hour, during which time the Herald was drifting toward shore rapidly, and during which time the Neptune maneuvered as close as she dared in order to lessen the weight and drag of the steel pendant and hawser; suddenly a great sea struck the Neptune when her bow was about 75 feet distant from the bow of the Herald and drove her right at the Herald's stem; at the same time the force of the same sea lifted the Herald and when she came down her stem knifed through the starboard side of the Neptune inflicting a mortal wound; she soon thereafter had to be abandoned; one of her officers fell overboard and died, apparently from a heart attack; her remaining men were removed to the Balsam by means of a life raft and the Balsam took after the drifting Herald after instructing the Sea Fox to stand by the Neptune; the Sea Fox stood by the sinking Neptune until she went down some 5 hours later, and then proceeded as fast as she could for the Herald; in the meantime the Balsam got her 10-inch manila hawser on the Herald but it soon parted in the storm and the Herald continued drifting toward shore which it was estimated she would strike about midnight; the Balsam had no other hawser suitable for use; when the Sea Fox caught up again with the Herald she instructed the Herald to drop her only anchor at

about the 30 fathom mark; the Herald failed to pay out enough chain so she dragged and the Sea Fox instructed her to let go 9 shots or all of her chain after which she apparently held; the Sea Fox tried to shoot a line to the Herald by means of a Lyle gun but her efforts failed under the prevailing adverse conditions; the Herald's position at anchor was approximately 46°, 42.5 north, 124° 19' west.

VI.

On the morning of the 17th the Coast Guard Cutter Winona arrived on the scene.

At this time the weather and sea had moderated; the damaged condition of the towing machine of the Sea Fox was explained and at the suggestion of the Sea Fox the Winona passed one end of her 12-inch manila hawser to the Herald and the other end to the Sea Fox and she moved out ahead of the Herald and kept her engine going ahead in order to ease the strain on the Herald's anchor chain and gear which was increasing as wind and sea got bad again; the Balsam left the scene to take the Neptune's survivors to Astoria after which she returned; the Winona remained until after the Hercules, which had departed from Seattle to the rescue, arrived shortly after midnight on the 18th.

VII.

After daybreak on the 18th the Hercules got her 13¼-inch towing hawser aboard the Herald where it was made fast, both the Sea Fox and the Hercules were soon in difficulty because in their effort to keep far enough apart to avoid collision they broached

broadside to the wind and were carried down abaft the Herald where they were "in irons" unable to move in any direction and they were in a helpless situation in which there was danger of collision; the crew of the Herald endeavored unsuccessfully to slip her anchor or release the anchor chain so the chain finally had to be cut with an acetylene torch borrowed from the Balsam; the Herald's only usable anchor was left on the bottom; thereafter the Herald in tow of the Hercules and the Sea Fox got under way for port; they reached Everett, Washington on the night of the 19th of November and the Hercules then returned to Seattle where she arrived about 1:00 a.m. on the 20th.

VIII.

The towing arrangement under which the Hercules and Sea Fox started out with the Herald was not the safest or best for ocean towing inasmuch as neither hawser could be made fast to the Herald's anchor chain which had been cut, and the hawser of the Sea Fox had to be secured to her towing bitts; the towing machine of the Sea Fox had been so previously damaged in her efforts to hold onto the Herald in the storm and dangerous seas that it was not usable at all; while enroute to port wind of gale proportion and heavy seas were encountered by the Hercules and Sea Fox with the Herald in tow; in all probability a 12-inch manila hawser if it only had been in use at the time would not have survived this storm; during this time the Herald was without any anchor and if she got adrift again in all probability she would have gone ashore; it is extremely

doubtful that the Herald, in the absence of any assistance from the Sea Fox or the Hercules, would have been able to weather this gale and these heavy seas if she had remained at her place of anchorage; during the period when the Herald was being held only by her anchor the weather had moderated and was relatively calm; by the time the wind and seas began to increase in force again the Sea Fox had a 12-inch manila hawser on the Herald and by keeping her engine going ahead she materially eased the strain on the Herald's anchor and gear; the Balsam did not have any suitable hawser and she was not equipped to tow the Herald into port; the Winona did not have a usable steel hawser; she was not equipped with a towing engine and the strong probabilities are that her manila hawser alone would not have been sufficient to bring the Herald into port; the equipment of the tug Hercules was essential for that purpose and the joint use of the Hercules and the Sea Fox was justified under all of the circumstances; the Balsam accompanied the Herald until tugs and the tow entered the straits of Juan De Fuca; the USS Prairie, a Navy tender, did not render any service to the Herald.

IX.

After the towing hawser parted shortly after midnight on November 16th the Herald was in grave danger and in impending peril; she was rescued therefrom only through the efforts of the Sea Fox and the Hercules, assisted by the Coast Guard Cutters Balsam and Winona; the services were suc-

cessfully performed and the master, officers and crew of the Sea Fox displayed promptitude, skill, energy and courage; she was shipping green seas at various times with danger of her men being washed overboard; there was danger of collision and ever present was the danger of a line fouling her propellor; the services were performed under hazardous conditions; the Sea Fox ultimately was successful in bringing the Herald into port with the joint help of the tug Hercules.

X.

The libelant master, officers and crew of the tug Sea Fox at the time of the rendition of the salvage services were:

Sea Fox

Rudolph T. Sommer, Master

James Reichel

Charles J. Harris

Gysbert Oliemans

Friedrich J. Ruyters

Cornielis Vanderboon

Theodore Slowiskow

Charles J. Olsen

Arthur V. Joudrey

Giocondo Ceccato

William Schmidt

Jerry M. Delmas.

XI.

Captain Sommer had been master of the tug Sea Fox for six years, operating under a master's license for San Francisco Bay and tributaries; said

license was not an unlimited one and it did not apply to him while on the high seas; Captain Sommer had considerable experience as a master of tugs in ocean towing and during the year 1948 prior to the towage of the *Herald* was the master of the *Sea Fox* while she was engaged in safely towing eight vessels on the Pacific Coast between San Francisco and the State of Washington and intermediate ports, three of which were precisely like the *Herald* and of the same dimensions; that at all times mentioned herein Captain Reichel, the chief officer of the *Sea Fox*, held a master's license which was an unlimited one and qualified him to be master of vessels of any tonnage on any ocean; Captain Reichel was an experienced tugboat man; that at all times mentioned herein C. J. Harris, who was the second mate of the *Sea Fox*, had an unlimited license to serve as chief officer on vessels of any tonnage on any ocean; that Captains Sommer and Reichel conferred frequently regarding the operation and navigation of the tug *Sea Fox* while towing the *Herald* and Captain Reichel made the nautical observations and took the sights in connection with the navigation of the *Sea Fox*; Captains Sommer and Reichel were experienced tugboat men and each of them impressed the court as able, competent, courageous and truthful mariners; that neither the *Sea Fox* nor her master nor Shipowners & Merchants Towboat Co., Ltd., nor Tug *Sea Fox*, Inc., was negligent or acted wrongfully in any of the particulars specified in the cross-libel or at all; that nothing that Captain Sommer did or failed to do

contributed in any way to the situation which gave rise to the necessity for the rendition of salvage services to the Herald; that the lack of an unlimited master's license on the part of Captain Sommer did not and could not have contributed to the plight of the Herald; the Herald went adrift and into a position of grave danger solely by reason of the violence of the storm; that the parting of the hawser of the Sea Fox in the full gale on November 16th, 1948, was an event over which neither Captain Sommer nor any other human had or could have any control; that the Herald went adrift in said gale without fault or negligence upon the part of anyone; the parting of the hawser was not occasioned or contributed to by the Sea Fox or libelants or any fault or neglect on their part; that the Sea Fox thereafter incurred the aforementioned risks and performed the aforesaid duties and services which were not within the scope of her original towage contract.

XII.

Prior to the commencement of the towage service, an arrangement was made between respondent and Pacific Car & Foundry Company, doing business as Everett Pacific Shipbuilding and Drydock Company, hereinafter called "Everett-Pacific" for the reconversion repairs to the Herald at Everett, Washington; pursuant thereto Everett-Pacific contracted with Shipowners & Merchants Towboat Co., Ltd., for the towage of the Herald to Everett, Washington, it being agreed that the towing tug, in consideration of an additional premium, would have the benefit of

the hull insurance on the *Herald* which was to be arranged for by respondent; as a condition precedent to the extension of said insurance to the tug or the release of the latter from liability, the hull underwriters on the *Herald* required that the towing tug and the make-up of the tow be passed upon and approved by a surveyor acting for them; Sudden & Christenson, Inc., as agent for Everett-Pacific, undertook the task of preparing the *Herald* for the towage venture and the libelants did not have anything to do with the make-up of the tow or preparing her for the venture; that the tug *Sea Fox* and the make-up of the tow were approved by the surveyor selected by the aforesaid underwriters and he pronounced them fit for the venture in November 1948 with the proviso that during the trip advantage should be taken of favorable weather to the extent possible; libelants complied with the wishes of Everett-Pacific and respondent with respect to the time for the performance of the voyage; Sudden & Christenson, Inc., also was the Pacific Coast Agent for respondent; that Sudden & Christenson, Inc., informed Everett-Pacific that respondent would arrange for the towage risk insurance and respondent thereafter did arrange for and place such insurance; that respondent paid the hull underwriters an additional premium for the extension of the insurance to the tug or for the release of the latter from liability; that by the terms of the policy of insurance issued by said hull underwriters the tug *Sea Fox* was released from any liability; that it was understood and agreed between all parties that the

risk to the Herald during the towing venture would be borne by the hull underwriters without any right of subrogation against the towing tug and that said hull underwriters would make good any loss resulting from perils insured against on the voyage of which salvage was one; that respondent and Everett-Pacific were anxious to move the Herald to Everett, Washington, as quickly as possible and during the month of November, 1948.

XIII.

Taking all of the circumstances into account, I find that libelants are entitled to an award of \$24,750 which should be divided between owners and master, officers and crew as follows: \$6,188 as the proportion due the master, officers and crew of the Sea Fox, to be divided between them in proportion to their wages at the time of the rendition of the salvage service, and the balance of \$18,562 to owners.

Conclusions of Law

And as conclusions of law the court finds that:

I.

Libelants are entitled to a salvage award of \$24,750, and judgment for said sum of \$24,750, with interest thereon at the rate of 7% per annum from the date hereof until paid, shall be entered herein in favor of Shipowners & Merchants Towboat Co., Ltd., and Tug Sea Fox, Inc., on their own behalf and on behalf of the master, officers and crew of the tug Sea Fox, of which \$6,188 is fixed as the propor-

tion due the master, officers and crew of the Sea Fox, to be divided between them in proportion to their wages at the time of the rendition of the salvage services herein.

II.

That respondent's cross-libel should be dismissed.

III.

That respondent Waterman Steamship Corporation is estopped from claiming or contending that the policy issued by the hull underwriters on the Herald did not inure to the benefit of the Sea Fox or that said policy did not release the tug Sea Fox from liability.

IV.

Libelants shall have judgment for their costs.

Dated June 20, 1951.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Lodged June 8, 1951.

[Endorsed]: Filed June 20, 1951.

In the Southern Division of the United States
District Court for the Northern District of
California

In Admiralty No. 25539 E

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation, on Its Own Behalf
and on Behalf of the Master, Officers and Crew
of the Tug SEA FOX,

Libelants,

vs.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Respondent.

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Cross Libelant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation,

Cross-Respondent.

FINAL DECREE

By reason of the law and the findings of fact on
file herein,

It Is Hereby Ordered, Adjudged and Decreed:

That libelants, Shipowners & Merchants Towboat

Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the master, officers and crew of the tug Sea Fox, do have and recover from Waterman Steamship Corporation, a corporation, the sum of Twenty-Four Thousand Seven Hundred Fifty Dollars (\$24,750.00), with interest thereon at 7% per annum from the date hereof until paid, of which Six Thousand One Hundred Eighty-eight Dollars (\$6,188.00), with interest as aforesaid, is the proportion due the master, officers and crew of the tug Sea Fox, to be divided between them in proportion to their wages at the time of the rendition of the salvage services herein, together with libelants' costs in the sum of \$29.24, with interest on said costs at 7% per annum from the date hereof until paid;

It Is Further Ordered, Adjudged and Decreed that payment of the amounts hereinabove awarded to proctors for libelants shall constitute a full discharge and satisfaction of all of libelants' claims for salvage arising out of the matters alleged in the libel, as amended.

It Is Further Ordered, Adjudged and Decreed that cross-libelant take nothing by its cross-libel and that the same be and it is hereby dismissed.

Unless this decree be satisfied within ten (10) days after the entry thereof and notice to proctors for respondent, the sureties or stipulators for costs do cause the engagement of their stipulation to be performed or show cause within four (4) days after the expiration of said ten (10) days, why

execution should not issue against them, their goods, chattels and lands to enforce satisfaction of this decree.

Dated June 20th, 1951.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Lodged June 8, 1951.

[Endorsed]: Filed June 20, 1951.

Entered June 21, 1951.

[Title of District Court and Cause.]

PETITION FOR APPEAL

Waterman Steamship Corporation, a corporation, respondent and cross-libelant herein, being aggrieved by the final decree made the 20th day of June, 1951, and entered herein on the 21st day of June, 1951, claims an appeal from said final decree and prays that said appeal may be allowed and, pursuant to Rule 36 of the Rules of the United States Court of Appeals for the Ninth Circuit, that it be limited to the review of the following questions involved in the cause:

1. The propriety of making any award for salvage in favor of libelants.
2. The award in favor of libelants in the amount of \$24,750.00 with interest and costs is excessive.
3. The propriety of the decree dismissing the cross-libel.

Dated San Francisco, August 28, 1951.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Waterman
Steamship Corporation.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Pursuant to the petition for appeal of Waterman Steamship Corporation, a corporation, respondent and cross-libelant herein, dated August 28, 1951, presented this date to the Court,

It Is Hereby Ordered that the appeal of Waterman Steamship Corporation, respondent and cross-libelant, from the final decree made the 20th day of June, 1951, and entered herein on the 21st day of June, 1951, be allowed as prayed for, and that said Waterman Steamship Corporation, a corporation, file an appeal bond with a corporate surety in the amount of \$30,000.00, and that upon the filing of said bond all proceedings under said final decree be stayed.

Dated September 17th, 1951.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Shipowners & Merchants Towboat Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the Master, officers and crew of the Tug Sea Fox, Libelants and Cross-Respondent, and to Joseph B. McKeon, Esq., and Messrs. McKeon & Colby, their proctors:

Please Take Notice that Waterman Steamship Corporation, a corporation, respondent and cross-libelant herein, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final decree made the 20th day of June, 1951, and entered the 21st day of June, 1951, by the above-entitled Court, limited to a review of the following questions involved in the cause:

1. The propriety of making any award for salvage in favor of libelants.
2. The award in favor of libelants in the amount of \$24,750.00 with interest and costs is excessive.
3. The propriety of the decree dismissing the cross-libel.

Dated August 28, 1951.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Waterman

Steamship Corporation.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Waterman Steamship Corporation, a corporation, respondent, cross-libelant and appellant herein, hereby assigns error in the proceedings, orders and final decision of the District Court in the above-entitled cause as follows:

1. In finding and concluding that libelants are entitled to a decree, and in entering a decree in favor of libelants in amount of \$24,750.00 with interest and costs.

2. In dismissing the cross-libel.

3. In failing to enter a decree in favor of cross-libelant as prayed.

4. In finding that the Herald of the Morning had a value in excess of \$375,000.00 and in failing to deduct from the fair market value of the vessel, if in class, the cost of placing the vessel in class.

5. In failing to find that libelants were at fault in departing from Drake's Bay, in that (a) the fair lead traveler was broken and not in repair, (b) the Sea Fox had no insurance wire aboard, and (c) the Sea Fox was unable to handle the tow in the moderately severe weather theretofore experienced.

6. In failing to find that libelants disregarded broadcasts of approaching stormy weather, failed to call for aid promptly and took no precautions to protect the tow.

7. In failing to find that the Balsam instructed the Sea Fox when to instruct the tow to drop her anchor.

8. In failing to find that but for the assistance of the Balsam and the 12" hawser obtained from the Winona, the Sea Fox could have been of no real assistance to the tow subsequent to the morning of November 16.

9. In unduly minimizing the value of the services of the Coast Guard Cutters Winona and Balsam and the Navy Tender USS Prairie and in failing to find that the services of those vessels were of a value in excess of 50% of the aggregate value of all salvage services.

10. In failing to find that the Tug Sea Fox was acting in violation of the International Convention Covering the Minimum Requirement of Professional Capacity for Masters and Officers at Sea and 46 U.S.C., Section 224a.

11. In finding that the lack of an unlimited master's license on the part of Captain Somner and his failure to comply with the qualifications required by 46 U.S.C. Section 224a did not and could not have contributed to the plight of the tow.

12. In finding that libelants assumed risks and performed duties and services which were not within the scope of the original towing contract, and in failing to find that the services rendered by libelants were merely those required of them under the

towage contract and the existing conditions affecting the tug and tow.

13. In finding that by the terms of the policy of insurance on the *Herald of the Morning*, the Tug *Sea Fox* was released from any liability to this respondent.

14. In finding that the risk to the *Herald of the Morning* would be borne by the hull underwriters without any right of subrogation against the towing tug.

15. In concluding that respondent is estopped from claiming or contending that the policy issued by the hull underwriters on the *Herald* did not inure to the benefit of the *Sea Fox* or that said policy did not release the tug *Sea Fox* from liability.

16. In failing to find that the services rendered by libelants were rendered merely in conformance with their contractual obligation to use their best efforts during the towing operation.

17. In failing to find that the existing towage agreement is a bar to any recovery of salvage by libelants.

18. In failing to find that any salvage award otherwise attributable to libelants should have been reduced by reason of the existing towage agreement.

19. In failing to find that the weather encountered on the voyage was normal for that area and season and within the contemplation of libelants.

20. In failing to find that libelants sailed from San Francisco and from Drake's Bay contrary to their obligation to take advantage of favorable weather.

21. In failing to find that the weather conditions for that season and area were not of a character to frustrate the towage contract.

Dated August 28, 1951.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Waterman Steamship Corporation,
Respondent, Cross-Libelant and Appellant.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the Above-Entitled Court:

Waterman Steamship Corporation, a corporation, respondent, cross-libelant and appellant herein, having appealed to the United States Court of Appeals for the Ninth Circuit from the Final Decree made by the above-entitled Court on the 20th day of June, 1951, and entered herein on the 21st day of June, 1951, you are hereby requested to prepare and certify Apostles on Appeal in accordance with Rule 37 of the Rules of the United States Court of Ap-

peals for the Ninth Circuit and applicable rules of this Court, and to file said Apostles on Appeal in said Appellate Court in due course. The Apostles on Appeal shall consist of the following:

- (1) Libel for Salvage.
- (2) Answer to Libel for Salvage.
- (3) Cross-Libel for Damages.
- (4) Answer of Shipowners & Merchants Towboat Co., Ltd.
- (5) Answers of Respondent and Cross-Libelant Waterman Steamship Corporation to Interrogatories Propounded by Libelants and Cross-Respondent.
- (6) Amendment to Libel.
- (7) Amendment to Answer to Libel for Salvage.
- (8) Amendment to Answer of Shipowners & Merchants Towboat Co., Ltd., to Cross-Libel and Interrogatories propounded to Cross-Libelant.
- (9) Answers to Interrogatories propounded to Cross-Libelant.
- (10) Memorandum Opinion.
- (11) Amendments Proposed by Waterman Steamship Corporation to Draft Findings of Fact and Conclusion of Law Heretofore Filed.
- (12) Findings of Fact and Conclusions of Law dated June 20, 1951.
- (13) Final Decree dated June 20, 1951.
- (14) Reporter's Transcript of the Proceedings at the Hearings had before the Honorable Michael J. Roche for January 17, 18 and 22, 1951.
- (15) Petition for Appeal.

- (16) Order Allowing Appeal.
- (17) Notice of Appeal.
- (18) Praecipe for Apostles on Appeal.
- (19) Assignment of Errors.
- (20) Petition for Order Fixing Supersedeas Bond.
- (21) Cost and Supersedeas Bond on Appeal.
- (24) Stipulation as to Service of Papers on Appeal.
- (25) All interrogatories and cross-interrogatories included in the pleadings.

Dated September 17, 1951.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Waterman Steamship Corporation,
Respondent, Cross-Libelant and Appellant.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

PETITION FOR ORDER FIXING
SUPERSEDEAS BOND

To the Honorable the Judges of the United States
District Court for the Southern Division of
the Northern District of California:

Waterman Steamship Corporation, a corporation, respondent, cross-libelant and appellant herein, hereby requests this Honorable Court to fix a supersedeas and cost bond on appeal in the above-captioned matter in the amount of \$30,000.00.

Judgment heretofore rendered in this matter on June 20, 1951, was in favor of libelants in the amount of \$24,750.00, together with interest thereon at 7% per annum from June 20, 1951, as more fully set forth in said Final Decree dated June 20, 1951. Costs of suit in the trial court have been allowed in the sum of \$14.24. It is reasonable to assume that the appeal in this matter will be decided in not exceeding one year from date, and therefore the sum of \$30,000.00 is an adequate bond to protect the appellees.

Wherefore it is respectfully prayed that a cost and supersedeas bond be fixed in the amount of \$30,000.00.

GRAHAM & MORSE,

/s/ CLARENCE G. MORSE,

Proctors for Waterman

Steamship Corporation.

Stipulated this 17th day of September, 1951, that the Supersedeas Bond may be fixed by the Court in the amount of \$30,000.00.

/s/ JOSEPH B. McKEON,

McKEON & COLBY,

Proctors for Shipowners & Merchants Towboat Co.,
Ltd., et al., Libelants, Cross-Respondent and
Appellees.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

COST AND SUPERSEDEAS BOND
ON APPEAL

Know All Men by These Presents:

That we, Waterman Steamship Corporation, a corporation, the above-named respondent and cross-libelant, and Fireman's Fund Indemnity Company, a corporation duly authorized and existing under and by virtue of the laws of the State of California, and duly empowered by law to act as and bind itself as a surety and to transact a surety business within the State of California, as surety, are held and firmly bound unto Shipowners & Merchants Towboat Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the Master, officers and crew of the Tug Sea Fox, libelants, and unto Shipowners & Merchants Towboat Co., Ltd., a corporation, cross-respondent, in the above-entitled action, in the full and just sum of Thirty Thousand Dollars (\$30,000.00), to be paid to said Shipowners & Merchants Towboat Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the Master, officers and crew of the Tug Sea Fox, libelants, and Shipowners & Merchants Towboat Co., Ltd., a corporation, cross-respondent, their and each of their successors or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns jointly and severally by these presents.

Signed and Dated this 17 day of September, 1951.

Whereas, lately and on the 20th day of June, 1951, at a regular term of the District Court of the United States for the Northern District of California, Southern Division, in a suit pending in said Court between Shipowners & Merchants Towboat Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the Master, officers and crew of the Tug Sea Fox, libelants, and Shipowners & Merchants Towboat Co., Ltd., a corporation, cross-respondent and Waterman Steamship Corporation, a corporation, respondent and cross-libelant, and numbered on the Docket in Admiralty of said Court as No. 25,539, a final judgment and decree was rendered in favor of Shipowners & Merchant Towboat Co., Ltd., a corporation, and Tug Sea Fox, Inc., a corporation, on their own behalf and on behalf of the Master, officers and crew of the Tug Sea Fox, libelant, and Shipowners & Merchants Towboat Co., Ltd., a corporation, cross respondent, and against Waterman Steamship Corporation, a corporation, respondent and cross-libelant, and the said respondent and cross-libelant has filed in the office of the Clerk of said District Court a Notice of Appeal from said final judgment and decree to the Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco and the State of California.

Now, the Condition of the Obligation Is Such that if Waterman Steamship Corporation, a corporation, shall satisfy the judgment in full, together with costs, interest and damages for delay, if for

any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the Appellate Court may adjudge and award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

This bond shall be deemed and construed to contain the "express agreement" for summary judgment and execution thereon mentioned in Rule 73 of the Rules of Civil Procedure for the District Courts of the United States and Admiralty Rule 19.

Dated San Francisco, September 17, 1951.

[Seal]

FIREMAN'S FUND

INDEMNITY COMPANY,

By /s/ F. J. BUTCHER,

Its Attorney in Fact.

WATERMAN STEAMSHIP
CORPORATION,

By SUDDEN & CHRISTENSON,
INC.,

As Agents.

By /s/ FRED J. FOSTER,

Its Secretary.

State of California,

City and County of San Francisco—ss.

On this 17th day of September, 1951, before me, Alice E. Lowrie, a Notary Public in and for said City and County, State aforesaid, residing therein,

duly commissioned and sworn, personally appeared F. J. Butcher, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said City and County of San Francisco the day and year in this certificate first above written.

[Seal] /s/ ALICE E. LOWRIE,
Notary Public.

My commission expires May 23, 1952.

State of California,
City and County of San Francisco—ss.

On this 18th day of September in the year one thousand nine hundred and fifty-one, before me, Helen E. Walsh, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Fred J. Foster, known to me to be the Secretary of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this certificate first above written.

[Seal] /s/ HELEN E. WALSH,
Notary Public.

My commission expires Oct. 22, 1954.

The foregoing bond is hereby approved this 18th day of September, 1951.

/s/ OLIVER J. CARTER,
United States District Judge.

The foregoing bond is hereby approved as to form this 17th day of September, 1951.

/s/ JOSEPH B. McKEON,
McKEON & COLBY,
Proctors for Shipowners & Merchants Towboat Co.,
Inc., et al., Libelants, Cross-Respondent and
Appellees.

[Endorsed]: Filed September 18, 1951.

[Title of District Court and Cause.]

STIPULATION AS TO SERVICE OF
PAPERS ON APPEAL

Receipt of service of copies of the following is
hereby acknowledged:

Notice of Appeal.

Praecipe for Apostles on Appeal.

Petition for Appeal.

Order Allowing Appeal.

Citation on Appeal.

Assignment of Errors.

Petition for Order Fixing Supersedeas Bond.

Cost and Supersedeas Bond on Appeal.

/s/ JOSEPH B. McKEON,

McKEON & COLBY,

Proctors for Libelants and
Cross-Respondent.

September 17th, 1951.

[Endorsed]: Filed September 17, 1951.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

January 17, 1951, 10:00 A.M.

Appearances:

For the Libelants:

JOSEPH B. McKEON, ESQ., and
HENRY V. COLBY, ESQ.

For the Respondents:

CLARENCE G. MORSE, ESQ., and
FRANCIS TETREAULT, ESQ.

The Clerk: Puget Sound Tug & Barge Company
v. Waterman Steamship Corporation, for trial; and
Shipowners & Merchants Towboat Co. v. Waterman
Steamship Corporation, for trial.

Mr. McKeon: Ready for libelants.

The Court: What case have you, counsel?

The Clerk: Two cases for trial, your Honor.

The Court: You may proceed.

The Clerk: Will counsel state their respective
appearances for the record?

Mr. McKeon: Joseph B. McKeon and Henry V.
Colby, for the libelants in each of the two cases.

Mr. Morse: Clarence G. Morse and Francis Tet-
reault for Waterman Steamship Corporation.

If the Court please, I have here the original an-
swers to interrogatories, which were served on
counsel yesterday, and wish to file them. In addi-

tion, I have prepared a trial memorandum, a copy for counsel, and the original for the Court.

Mr. McKeon: Shall I make an opening statement, your Honor?

The Court: You may.

Mr. McKeon: There are two libels here before the Court, the Puget Sound Tug & Barge Company against Waterman Steamship Corporation, and Shipowners & Merchants Towboat Co. against Waterman Steamship Corporation. Both of these cases are ones of salvage. Mr. Morse and I have agreed that it will be in order for the Court to make an order consolidating both cases [2*] for the purposes of trial.

Mr. Morse: So agreed.

The Court: Let the record so show.

Mr. McKeon: We are also going to try to do as much stipulating as we can, your Honor.

The Court: That will be helpful.

Mr. Morse: Like to streamline the case and we will do our utmost to assist.

Mr. McKeon: I don't think we have too much disagreement on the facts.

The tug Sea Fox under bareboat charter to the libelants and Shipowners & Merchants Towboat Company, undertook to tow a vessel known as the Herald of the Morning from Oakland Estuary to Everett, Washington. Waterman Steamship Corporation had purchased that vessel from the Government and she had to be reconditioned and re-

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

paired and the Everett Shipyard was awarded the job and pursuant to an agreement between the Everett Shipyard and the towboat company the vessel was under way and being towed to Everett.

She ran into some very bad weather and her towing hawser parted in the teeth of a full gale. She thereafter, it is our contention, rendered salvage services to the *Herald of the Morning*. The *Herald of the Morning* was a light ship. She was without cargo, without ballast, without power, without any means of propulsion, and in fact without any means of handling [3] any of her equipment aboard the ship such as anchors, without auxiliary power. She had only one anchor usable. That is the—that was the port anchor. The starboard anchor had been removed, the hawsepipe, and passed on—secured on deck. The starboard anchor chain was the medium to which the tug's towing wire was made fast. In other words, they shackled the tug's towing wire onto the anchor chain, the anchor having been removed.

Mr. Morse: May I interrupt, Mr. McKeon? It might interest the Court to inquire why, wonder why they used the anchor chain in the connection between the tug and the tow. As I understand it, the weight of the anchor chain serves as a spring when the vessels draw apart, to minimize the shock with the length of the chain, length of the line.

Mr. McKeon: Well, it is well understood that that is the best method of connecting a tow wire. There can't be any question about that.

Mr. Morse: That's right.

Mr. McKeon: During the storm the clutch on the towing machine of the tug carried away. Your Honor will remember the teeth that fit in and around the drum, they just pulled apart. They had to try to wedge that drum. It is a very huge towing machine in the aft end of the tug.

The Court: Is that on the barrel head?

Mr. McKeon: Yes, your Honor, it is a drum—I have a [4] photograph, your Honor, just intended to be illustrative, your Honor.

This tug is equipped with a one and $\frac{3}{4}$ inch steel towing hawser and that winds around the drum, but the drum is secured by brakes, automatic brakes, and hand brakes, and a brake band, and when secured for towing, everything is tight.

Well, the clutch broke, the teeth in the clutch broke. They rigged it up with a wedge and that held for a time, and that carried away. They eventually put a big chunk of iron and wedged that against the framework of the towing machine and the drum and that held it fairly securely.

They communicated for help. The tug Neptune was on her way north. The tug Neptune, which is owned by the Puget Sound Tug & Barge Company, went to the rescue, and without elaborating too much on that, your Honor, in the attempt to rescue the Herald of the Morning, she was sunk and lost.

The testimony will show that in the seas that were raging, the tug and the steamer came together at the stem while the tug actually, that is, the Nep-

tune, actually had a line up to the Herald of the Morning. On the Herald they had, I think, 13 men on the Herald.

Mr. Morse: 16 in all.

Mr. McKeon: Whatever the number. They were actually trying to haul that steel hawser in from the Neptune at the time that the two vessels came together. Then the tow, the Herald [5] of the Morning, was adrift, and the vessels put out after her and she eventually was anchored. At this time, of course, they let out her port anchor. The Puget Sound Tug & Barge Company, the owners of the Neptune, then sent down from Seattle to the scene the tug Hercules. The tug Hercules and the tug Sea Fox eventually brought the Herald of the Morning into Everett.

During this time, too, the tug Sea Fox called for assistance from the Coast Guard and the Coast Guard cutter Balsam came out and stood by, attempted to get a line aboard without success, and eventually remained in the vicinity throughout—until, I think, the 19th, 18th or 19th of November, 1948, the towing hawser of the Sea Fox having parted in the early morning of November 16.

The Coast Guard cutter Winona also appeared on the scene and succeeded in getting a manila hawser passed to the Herald of the Morning while the Herald of the Morning was at anchor and cast the other end of that line to the Sea Fox, and the Sea Fox stood by for the rest of the time, holding on to the Herald of the Morning with this twelve-

inch manila hawser, thereby adding additional protection to the Herald from dragging her anchor in a bad blow, drifting, and she remained there until the Hercules came down and made her steel wire fast to the Herald, and then the Herald—then the Hercules and the Sea Fox got under way on the 18th and brought the vessel in to Everett.

The United States Maritime Commission owned the vessel and [6] sold it to the Waterman people. In the arrangement for the tow and in connection with the price for the towing service, it was agreed that the tug, the Sea Fox, or the Shipowners & Merchants Towboat Co., the party to the towage contract, would have the benefit of the insurance on the Herald of the Morning, the Waterman people having insured that tow. It was arranged that in consideration of an additional premium, which Waterman was to pay and paid, the tug would have the benefit of the insurance and the effect was in effect the waiver of subrogation against the tug.

In other words, the loss here—put it this way: the policy of insurance on the Herald of the Morning insured against marine risks, including salvage. They insisted upon and made a requirement that the tug and the tow and the equipment be passed on by a surveyor to the Board of Marine Underwriters of San Francisco, the United States Salvage Association, before they would insure the risk. That was done and a surveyor to the United States Salvage Association and the San Francisco Board of Marine Underwriters did pass upon the venture

and he did approve and pass the tug, the equipment and the tow as suitable for the voyage. Despite that situation, and despite the fact that the tug has the benefit of that insurance, those same underwriters, through Waterman, this being a suit defended by underwriters through Waterman, have filed a cross-libel in the name of Waterman against the Ship-owners, claiming that the tug [7] Sea Fox was negligent in handling it.

I think that about tells the story briefly, your Honor.

Mr. Morse: Only one or two points I want to mention. Mr. McKeon, I think, overlooked mentioning where the so-called salvage services were rendered, just north of the Columbia River. In other words, the tug and tow had gotten that far north on its voyage between here and Everett, Washington.

The Court: Approximately what would be the distance?

Mr. Morse: From where?

The Court: From the Columbia River.

Mr. Morse: It was offshore about 15 or 20 miles from the Columbia River to Everett, would be in the neighborhood of 350 miles.

Mr. McKeon: Approximately two-thirds of the entire voyage.

Mr. Morse: It is our position that—I will just summarize, your Honor, the highlights of our position. One is that the tug Sea Fox is not entitled to any salvage award in this matter because it had contracted to use its best efforts to tow the Herald

of the Morning to Everett, Washington, and in performing such services as it did perform after the tug towline broke, those were performed merely in conformance with this obligation to its own tow. In other words, it couldn't, when the towline broke, it couldn't stand by and say, "O.K., Brother, you are on your own; you go your way and I'll go my way." It was obligated to do what it did do, in so far as the tug Hercules is [8] concerned. Bear in mind the fact that the tug Hercules came to the Herald of the Morning from Seattle after the Herald was at anchor and at that time had put its line—the weather had moderated very substantially—put the line from the Hercules to the Herald of the Morning and assisted the Sea Fox to proceed to and into Everett, Washington. If it is entitled to salvage, it is salvage of a low order. Substantially all it did was towage service and in those instances double towage is not an unusual award, double the average, the usual towage rate.

We contend that the main and effective assistance that was rendered to the Herald of the Morning was rendered by the Coast Guard vessels, the Balsam and Winona, which were big Coast Guard vessels equipped with salvage gear, and so forth, that stood by when the storm was at its worst, gave a line to the Sea Fox when she was at anchor, ultimately transferring that line to the—I beg your pardon—gave the line to the Herald of the Morning when the Herald of the Morning was at anchor, transferred that line to the Sea Fox. By the way, the Sea Fox apparently didn't have what we call

an insurance wire aboard. In other words, a second towing wire aboard in the event that its original wire broke, so that when its wire broke on the 14th, on the 16th of November—this is 1948, by the way—they had no means of effectively aiding the *Herald of the Morning*.

Mr. McKeon: May I correct you? I think it is important, [9] you are mistaken. They still had a wire aboard.

Mr. Morse: Well, I am glad to be corrected. To the best of our information, it wasn't passed to the *Herald of the Morning*, in any event.

Another point which we wish to bring out and develop is that the storm which occurred on this occasion was rather a severe storm, but it wasn't an unseasonable storm. It was the middle of November off the northern Oregon-Washington coast, and a storm which might normally be anticipated at any time during that month. Furthermore, storm warnings were broadcast before the tug and tow separated.

Mr. McKeon: Before what? The tug and tow what?

Mr. Morse: Separated. Which placed additional obligations on the tug to protect the interests of the tow, *Herald of the Morning*. We will endeavor to develop these more as we proceed.

Mr. McKeon: Before we start with the——

Mr. Morse: I beg your pardon. One more. We don't agree with Mr. McKeon's interpretation of the right of the *Sea Fox* to claim the benefit of the

insurance which the Waterman Steamship had, insuring the *Herald of the Morning*. Under our contract with the Maritime Commission, they were obligated to name Everett Pacific——

The Court: What is that?

Mr. Morse: Everett Pacific, the repair yard at Everett, Washington, who was doing the conversion work. This ship was [10] one of those so-called baby flat tops which was to be converted at Everett, Washington to a cargo vessel. Under our contract with the government, we were obligated to give Everett Pacific, or named Everett Pacific as an assured in that insurance policy and those arrangements were——completed the duties which Everett Pacific had with the Shipowners, the tugboat company, the owners of the tug *Sea Fox*.

Now, in that separate contract, the towage contract, Everett Pacific was obligated to insure the tug *Sea Fox* or give the tug *Sea Fox* the benefit of Everett Pacific's insurance. Everett Pacific never requested Waterman to do that, to have Everett, to have Shipowners named as an insured, and accordingly the insurance was never endorsed to name Shipowners, the *Sea Fox* owners, as an assured or waiving subrogation as to Shipowners.

Mr. McKeon: The fact is that there was an additional premium paid in consideration for the release of the tug from liability by the Underwriters.

Mr. Morse: The tug—the insurance speaks for itself, I think that is the best——

Mr. McKeon: We shall put the policy in evidence.

Mr. Morse: Yes, it will be put in evidence.

Mr. McKeon: It will be entirely new law if that tug is not entitled to benefit of the policy.

In the answers to the libels, if the Court please, there [11] were some denials which have now become admissions. The corporate status of the libelants as alleged is admitted, and with respect to the—you correct me, Mr. Morse, if I am wrong——

Mr. Morse: Certainly.

Mr. McKeon: With regard to the tug Sea Fox, it is now admitted that she was operated by the libelant Shipowners and Merchants Towboat Co., Ltd., under a bareboat or demise charter from her owner to the Shipowners.

Mr. Morse: Who was the owner?

Mr. McKeon: Tug Sea Fox Company. I have the certificates here. I shall introduce the certificates. And with regard to the tug Hercules, she was under a bareboat charter from Cary-Davis Tug & Barge Company, also a libel in the Puget Sound case, to Puget Sound Tug & Barge Company. In other words, the bareboat charters are admitted in those two cases. The tug Neptune was owned by the Puget Sound Tug & Barge Company, and in that connection I will introduce the certificate of title to each of the three tugs I think they can probably take one exhibit number for the three tugs.

The Court: They may be admitted and marked.

The Clerk: Libelant's Exhibit 1 admitted and filed in evidence.

(Whereupon the three certificates of title were received in evidence and marked Libelant's Exhibit No. 1.)

Mr. McKeon: Then I would like to introduce in evidence and [12] have deemed read without actually taking the time to read them, the interrogatories 5, 6 and 7 attached to the Shipowners' answer to the cross-libel and interrogatories 5, 6 and 7 attached to the Shipowners' answers to Waterman's third party petition in the Puget Sound case, and the answers of Waterman Steamship Corporation to each of those interrogatories. They are now attached to the pleadings as a matter of record.

The Court: Made a part of the record?

Mr. McKeon: It is my understanding, your Honor, that what I am doing is necessary on interrogatories.

The Court: Any objection to making them a part of the record?

Mr. Morse: None at all.

Mr. McKeon: What I am doing is getting them in evidence.

Mr. Morse: Why not have the interrogatories, all interrogatories and all answers part of the record?

Mr. McKeon: That is something that you can do. I don't want to get into a discussion of law and it would take a long time, your Honor. One

can't, by self-serving declarations, get them in evidence. But that is the main——

Now, there is also, as your Honor has noticed, and just served and filed this morning, some additional interrogatories and answers attached to the Shipowners' amendment to the answer to the libel, and in that connection, I would ask they be deemed read, the latter interrogatories 1, 2, 4, 5 and 6, and [13] Waterman's answers to each of those interrogatories so attached to the Shipowners' amendment to the answer to the cross-libel.

For the purposes of this case, of these cases now on trial, it is stipulated that the value of the Hercules, tug Hercules, and tug Sea Fox may be taken at \$125,000 and the tug Neptune at \$150,000. You will have the insurance contract?

Mr. Morse: Yes, sir. While we are at this position, may I interrupt to suggest we name the values of the ship we hope to prove, of the Herald of the Morning and the two Coast Guard vessels, only so that the values appear in a common place in the record without—pardon the interruption.

Mr. McKeon: Yes.

Mr. Morse: Mr. McKeon, would you be willing to stipulate if Captain Pillsbury—and Captain Pillsbury is a recognized valuation expert here on this Coast—would it be stipulated that if Captain Pillsbury were here and called to testify he would testify that the value of the Herald of the Morning upon arrival in Everett, Washington, was \$343,156.00?

Mr. McKeon: Is that the figure that you have on your tabulation?

Mr. Morse: Yes, sir.

Mr. McKeon: If you will state that is what Captain Pillsbury will testify, of course, I will accept it.

The Court: Subject to any correction.

Mr. Morse: Subject to correction. [14]

Mr. McKeon: What I am stipulating to is that if Captain Pillsbury were called, that would be what his testimony would be.

The Court: Yes.

Mr. Morse: Well, let us pass it for a moment. I am pretty sure I spoke to Captain Pillsbury on that, but I will verify it later. I did speak to Captain Pillsbury in respect to the Coast Guard vessels which just left yesterday afternoon and he stated to me that the fair depreciated replacement value, and these are specialized government type vessels, on the Balsam would be \$400,000 and of the Winona, \$750,000. Now, he stated that is a fair market value, except it is difficult to fix a fair market value on those specialized types of vessels, isn't a market for them, but that is the fair depreciated replacement value for them.

Mr. McKeon: I will make the same stipulation. If called, he would testify that that is the depreciated value.

Mr. Morse: Thank you.

Mr. McKeon: Captain Reichel.

Have we made the case sufficiently clear to your Honor to proceed with the testimony?

The Court: If not, I will ask you to clear it up after we get a record. [15]

JAMES RALPH REICHEL

called as a witness on behalf of the libelants; sworn.

The Clerk: Will you state your full name to the Court, please?

A. James Ralph Reichel, occupation master mariner.

Direct Examination

By Mr. McKeon:

Q. Captain, how long have you held a license from the United States Government?

A. Ten years.

Q. How long have you held a master's papers?

A. Five years.

Q. What are they, unlimited?

A. Unlimited, master of oceans.

Q. Prior to the Herald of the Morning episode, how long had you been engaged in the towboat business? A. About two and a half years.

Q. Have you, as master or mate of ocean-going tugs, have you had experience in ocean-going towing? A. Yes, I have.

Q. Were you the mate of the Sea Fox in November, 1948, on the voyage in which you were towing the Herald of the Morning from San Francisco Bay to Everett? A. Yes, I was.

Q. Please tell the Court the manner in which your hawser was made fast or connected to the Herald of the Morning when you [16] started out?

(Testimony of James Ralph Reichel.)

A. In leaving the dock, the hawser was made fast to the bitter end of the anchor chain of the Herald of the Morning.

Q. Which, the starboard or port chain?

A. That was the starboard chain.

Q. What were you using on the Sea Fox, a steel hawser?

A. We were made fast to the Herald of the Morning with a 1 $\frac{3}{4}$ inch steel hawser.

Q. Where, on the tug, was that steel hawser made fast?

A. Well, the steel hawser was made fast and was on the winch drum, which is on the after end of the towboat.

Q. And fastened onto the anchor chain, is it?

A. Yes, sir.

Q. Is the securing of it to an anchor chain the best method of towing the vessel at sea?

A. Yes, sir.

Q. In your opinion, is such a steel hawser preferable to the use of a twelve inch manila hawser for ocean towage for vessels such as the Herald of the Morning?

A. Yes, sir, it is.

The Court: I am afraid the Reporter is having difficulty in following you.

Q. (By Mr. McKeon): The question I asked: In your opinion, is such a steel hawser preferable to the use of a twelve inch manila hawser for ocean towage on such a vessel as the Herald [17]

(Testimony of James Ralph Reichel.)

of the Morning? A. I think I answered yes.

Q. Will you please tell the Court what precautions, if any, you took to protect your steel hawser on the tug?

A. Well, upon clearing, go outside, pay out the—most of the wire——

Q. I am talking about what you do with your steel hawser to protect it, let us say, from chafing or rubbing.

A. That is what I am getting at, yes, pardon me—going at it roundabout. After paying out the wire, you put on what we call a towing board which protects the hawser from chafing on the stern of the towboat.

Q. And what is that towboat made of?

A. The parts of the board consists of a very hard piece of lumber, approximately six feet long, by two and a half feet wide.

Q. Is that a fair description of what you would call your tow board?

A. Yes, that is the type we use.

The Court: Indicate it. Where is it?

The Witness: The tow board is this board right here (indicating on photograph).

Q. (By Mr. McKeon): Shackled onto the wire?

A. Fastened onto the wire.

Mr. McKeon: The effect of that, your Honor, is to keep [18] the wire away from the——

Q. When you started out, how many steel hawsers did you have on the Sea Fox?

(Testimony of James Ralph Reichel.)

A. We had two full length ones and then one about 600 feet long.

Q. Two full length ones, and one about 600?

A. I will clarify that to say the one was on the winch drum, one of the full length ones was on the drum.

Q. Do you know what that length is?

A. I would estimate about 1,200 feet.

Q. The two longer hawsers are of the same dimensions, $1\frac{3}{4}$ inches?

A. Yes, they both are the same.

Q. Will you please state the condition of the tug and towing machine and her equipment when you started out on the voyage with the Herald of the Morning?

A. Well, the entire tug, all our equipment was in first class condition.

Q. Did you have anything to do with the preparation of the Herald of the Morning for the venture?

A. No, I did not.

Q. Did any of your people, any on your tug?

A. Not that I know of.

Q. Do you know what was done with the star-board anchor on the Herald? [19]

A. No, I did not see it myself. I just know it wasn't made fast to the end of the chain.

Q. When you started out, she had the single port anchor available for use?

A. Yes, the port anchor was in the hawse pipe.

Q. That was the only one she had available for use?

A. That's right.

(Testimony of James Ralph Reichel.)

Q. Coming out from the Oakland Estuary and across the San Francisco Bay and until you got out through the gate, I understand that you had another tug assisting you?

A. Yes, the tug Sea Wolf also had a wire on her.

Q. Now, after you got outside—when I say “outside” I mean on the ocean out of San Francisco, did you have or find it necessary to throttle down or shut down on your power?

A. Not on the start of the voyage.

Q. At any time thereafter?

A. Oh, yes, later on after the weather increased, we had to slow down.

Q. Along about the 7th, the towing hawser that you had, parted? A. That is correct.

Q. And if the Court please, if I might try to state and save some time, you eventually put in at Drake’s Bay and another tug came out, the Sea Prince, and passed a line and you both went to Drake’s Bay and were ready to proceed on the voyage again, and I think the Sea Prince’s hawser was passed to you and you [20] went on with the Sea Prince’s hawser, that is, when you, when the Sea Prince’s hawser, when the steel hawser was passed to you, that was made fast around your drum?

A. Yes, that is true, but we had lost, of course, the hawser which parted.

Q. I understand that.

A. And then placed another hawser up on the

(Testimony of James Ralph Reichel.)

ship and that hawser, which tangled in the winch drum, and we had to cut it clear.

Q. Yes.

A. So then we got the hawser from the Sea Prince.

Q. Yes.

A. He made it fast to the chain of the ship and he passed the bitter end to us, which we made fast to the winch drum. We then proceeded with that hawser.

Q. Then you at that time, you had two, your own hawser, steel hawser around the drum, and another spare?

A. That is correct.

Q. And you went on your way?

A. That is correct.

Mr. Morse: May I interrupt? It isn't clear in my mind, the other spare that you had, that was the 600 foot wire?

The Witness: That is correct.

Mr. McKeon: Had three.

The Witness: No, we lost two, I am sorry. [21]

The Court: Tell us in your own way.

The Witness: Why, we had lost this one wire when it parted and the people aboard ship had let go the chain, of course they lost that part of the chain and that hawser and we placed another hawser up at that time on the ship, and then we lost that hawser, too, and so that left us with the hawser from the Sea Prince plus our short hawser.

Q. You didn't lose the second hawser? It just fouled on the drum?

(Testimony of James Ralph Reichel.)

A. But it wasn't of any use. We had to cut it, to get that off the drum completely.

Q. Then what did you do with that?

A. We dropped it overboard.

Q. You lost it overboard? A. Yes.

Q. Now, after you got on your way again with the Herald——

Mr. Morse: May I interrupt there, Mr. McKeon? As I understand the pleadings, no claim is made for salvage on this first breakdown just off——

Mr. McKeon: That is correct. We are not making any claim for compensation for this additional service.

Q. After you got under way again, did you proceed along with your tow?

A. Yes, we proceeded right up the coast making quite good time. [22]

Q. And when did you encounter weather and seas thereafter which seriously interfered with your towage?

A. I don't recall the exact date now. I could check the log book and find that in the log, but it was about the time of Point Arena, which is further north up the coast, I should say two or three days, but I am certain a few—let me see the log. I could check it when we hit the weather.

(Witness looking at log.)

On November 11, Thursday, was the time we run into more heavy weather.

(Testimony of James Ralph Reichel.)

Q. Well, then, go along and what did you encounter on the 14th?

A. Oh, the 14th was the day that it began blowing very hard and we lost our towing board over the side.

The Court: Lost your what?

The Witness: The towboard went overboard.

The Court: Towing board.

The Witness: And we were encountering tremendous seas and a very heavy blow and had to throttle down to just bare steerage way to try and preserve the wire which was stretched between us and the tow.

Q. Well, did that weather continue on through most of the 14th and 15th?

A. Yes, that weather continued on the 14th, 15th, 16th, for about three days it was heavy weather. Of course at times it blew harder and times it would ease down, but the overall picture was heavy weather. [23]

Q. Did you or your master, or did you have anything to do with communicating with the Neptune or the Coast Guard in and about that time?

A. Yes, Captain Sommer and I discussed the situation and decided to contact the Neptune, which we knew was up the coast, to have them come and stand by in case of any eventualities, and we also contacted the Coast Guard station in Astoria for the same reason.

Q. Well, now, during this weather, what, if any-

(Testimony of James Ralph Reichel.)

thing, happened to your towing machine, towing engine?

A. Well, the teeth on the clutch were torn loose, they tore right out and of course the drum started to pay out.

The Court: Indicate what it is, will you? That is here (indicating)?

The Witness: Yes, the part, that type, the underneath, the part where it was carried away, this would be the same teeth (indicating).

Mr. McKeon: I think I have a better picture of that.

The Court: All right.

Mr. McKeon: Showing the—That is the picture of the clutch?

The Witness: Yes, this is, would be the one here.

The Court: I understand.

Q. (By Mr. McKeon): What did you do after your clutch carried away? [24]

A. The clutch carried away, of course—when the clutch carried away, we, of course, tightened up as hard as we could on the hand brake and still the drum slipped, would turn the wire, turn the drum against the hand brake, so we put a steel wedge in between the side of the winch drum and the bottom of the winch itself.

The Court: Would you indicate that?

The Witness: The other picture, sir.

The Court: This one (indicating)?

The Witness: Would do better, I think. Is there

(Testimony of James Ralph Reichel.)

a third picture available showing the other side of the winch?

Mr. McKeon: I don't know. I will see.

Mr. Morse: So we will have a clear record, I suggest these be identified.

The Witness: Yes, this will show. Well, put a piece of metal in between these lugs on here on this bottom of the winch across here (indicating), which is solid iron, so that it would fetch up between here and here (indicating).

Q. (By Mr. McKeon): Explain that to the Court.

A. Yes, sir. This part was turning.

The Court: Yes.

The Witness: Inserted a piece of metal so it will be jammed up between this lug here and this solid steel part of the winch, that is the bottom of the winch, that part is made fast, of course, and that would stop the thing from turning. [25]

The Court: Referring to these photographs, I think it will be well to identify them for the purpose of the record so there won't be any question about it.

Q. (By Mr. McKeon): The one showing the clutch which carried away, which you have identified?

A. Yes.

Mr. McKeon: Shall be marked, let us say A?

The Court: Very well.

Mr. McKeon: And do you want to put the number on it?

(Testimony of James Ralph Reichel.)

The Clerk: Yes. Have to go 1, 2, 3, 4. I understand those interrogatories you were offering and the answers thereto were an exhibit also?

Mr. McKeon: No exhibits, not exhibits, just go in evidence.

The Clerk: All right. This one will be libelant's exhibit 2.

Q. (By Mr. McKeon): Is that the one——

A. No, sir, it was this. There was another one. That is the one I just showed you.

Q. What does that show, so we will have it in the record?

A. Well, that shows the starboard side of the winch.

Q. And the place where you——

A. Well, the place where the iron bar, the wedge was inserted to keep it from turning.

Mr. McKeon: That photograph, then, is that No. 3? [26]

The Court: Libelant's Exhibit 3.

Q. (By Mr. McKeon): Would you characterize the weather that you were experiencing on the 14th and 15th in layman's, not seaman's language—the Court doesn't know so much about that as you do. Neither do I. And I want you to tell the Court just exactly what that weather was.

The Court: You would be surprised how little I know about the sea.

The Witness: Well, we have a log record. We put down very rough seas, and winds as force 8,

(Testimony of James Ralph Reichel.)

9 or 10, and those are forces which are forces of intensity, zero being calm and as you get higher on the scale it gets to blowing very hard. Force 10, I would say, would be approximately 65 to 75 miles an hour.

Q. I don't want, that is not what I am after. Those are scientific words. I want you to describe to the Court——

The Court: Pardon me. He was helping me.

Mr. McKeon: I beg your pardon.

The Court: Go right on. You may develop what you had in mind. What about this 75 miles an hour?

The Witness: The force—the wind would be blowing at approximately 75 miles an hour.

The Court: Yes.

The Witness: Of course, as you know, aboard a towboat or a merchant ship, it is usually done by estimation.

The Court: Yes. [27]

The Witness: We have to use our own judgment how hard it is blowing, where naval ships have instruments to show that, but at this time the wind was blowing very hard and I estimated it was blowing 60 to 70 miles an hour, and the seas were very large in size; they would crash aboard the towboat and go up over it—saw green water. It is hard to estimate how high they would be, but I would estimate it 40 feet, because looking out from the deck of the boat they were higher than we were.

(Testimony of James Ralph Reichel.)

Q. What effect would those seas and weather have on you and the tow?

A. Well, of course the seas and weather were pounding both of us terrifically, and the ship being a light ship, and the whole side of it, just like a sail, she tended to lay over in the wind as a sailing ship would lay up in the wind. This would do the same thing, broadside into the wind, and the strain between the seas, like we go up one swell and the ship would be on another one and you would get a tremendous strain on your wire; in fact, would lift the wire and chain entirely out of the water.

The Court: Referring to your cable as a wire?

The Witness: Yes, sir, I should——

The Court: Give the dimensions.

The Witness: ——should use cable, but we speak of it as a wire.

The Court: That is why I wanted the [28] dimensions.

The Witness: $1\frac{3}{4}$.

The Court: All right.

Q. (By Mr. McKeon): And you just mentioned the whole thing rises, including the chain?

A. Yes, it would lift the wire and chain completely out of the water between the seas.

Q. You are talking about the ship's anchor chain? A. The ship's anchor chain.

Q. To which the cable or wire was made fast?

A. That is right.

Q. The Balsam, the Coast Guard cutter Balsam,

(Testimony of James Ralph Reichel.)

came out in response to your call during the part of this weather that you are describing?

A. That is right.

Q. And did the Neptune also arrive there on the scene?

A. Yes, the Balsam arrived first and the Neptune arrived next.

Q. After the arrival of the Neptune, or when both of those vessels arrived, you had your hawser fast to the Herald?

A. Yes, we were still fast.

Q. You were holding on?

A. That is right.

The Court: We will take a recess for a few minutes.

(Short recess.)

The Court: I won't have any afternoon session. I am going to a funeral. If you have any witnesses you want to excuse, [29] you may do so.

Mr. McKeon: I think in those circumstances that all might be excused until tomorrow at 10:00, your Honor?

The Court: Very well.

Mr. McKeon: The Court says there will not be any session this afternoon. We will take all morning for Captain Reichel. So if you gentlemen wish to go, you may.

If the Court please, one of these photographs, the one that showed the towing board for purposes of illustration, has not been marked for identification, and I think perhaps we better do that.

(Testimony of James Ralph Reichel.)

The Court: Very well.

Mr. McKeon: I should also state, and I think it will be conceded that it is merely for purposes of illustration, that is not where a towing board would be rigged up on the tug when in use, that is correct, isn't it?

The Witness: That is right.

Mr. McKeon: It is merely there as a photograph to show what a towing board is.

The Court: Very well.

Mr. McKeon: Not where the towing board would be located when in use.

The Clerk: Libellant's Exhibit 4 marked for identification.

Mr. McKeon: This is for identification?

The Clerk: Yes, for identification. [30]

Q. (By Mr. McKeon): You might explain to the Court where that towing board is located when in use.

A. Yes. If you assume this wire is made fast to a ship on the other end to the anchor chain, then we put it on in this position and slack out on the wire until this board just over the stern, so that every time the wire took a slide to the left or right or up or down, this part would strike the stern of the ship instead of the wire (indicating).

Q. And while we are discussing that picture, Exhibit 4 for identification, that wire that is on the board seems to come out through a pair of rollers.

A. Yes.

(Testimony of James Ralph Reichel.)

Q. What are they?

A. They are fair leads.

Q. What you call fair leads and the wire comes from the drum through those fair leads and goes aft?

A. That is right, yes.

Q. And then it is connected with——

A. It is shackled with a large shackle made fast to the anchor chain.

Q. Of the other vessel?

A. Onto a shackle about so long.

Q. Now, do you, as a matter of practice, when your wire comes out from your fair leads, make the wire fast any place on the after deck of the tug? [31]

A. No.

Q. It runs directly astern, then over the stern of the vessel, you got a roller on the stern of the vessel?

A. Yes.

Q. Metal rollers?

A. That is when the wire is either paid in or out. It turns back there to minimize friction.

Q. And that is the position where the towing board——

A. The towing board would be over the top of the roller.

Q. The idea of the towing board is to prevent chafing and rubbing of the wire?

A. That is correct.

Q. Now, did you have any other mishap with your towing machine in that weather?

A. Yes, as the storm progressed and it got worse, the strain got so bad on the drum that it forced

(Testimony of James Ralph Reichel.)

against those lugs and we had jammed and broken the piece of metal we had in there; we had a moderate sized piece of metal in there, so we had aboard a piece of metal about a foot long, maybe two feet long by six inches square, and we jammed that in there and that finally locked it. Of course, prior, between the two times these two were in, the wire was paying out and it was a case of getting it in there real quick so that the end, the end wouldn't—wouldn't come to the end of the wire and come off and lose it.

Q. What is a preventer wire? [32]

A. A preventer wire is used aboard a towboat, is a wire which would be clamped to your tow wire to help hold it. In other words, to relieve the strain off of the drum so it wouldn't have all the weight on the drum. What you do is—if I could have the picture, I think I could show you better.

Q. Which one?

A. Any one showing the after end of the winch.

The Court: Better be marked for the record.

The Witness: I think this one will do very well.

Mr. Morse: No. 4 for identification.

The Witness: You have a piece of wire, usually it is of the same size as the tow wire, but of course much shorter piece, it is a piece about ten or twelve feet long. What you do is have the wire at one end, make that eye fast in the pelican hook on the deck and the other end you make fast to the wire with clamps like these (indicating); use about four

(Testimony of James Ralph Reichel.)

of these clamps in a row and then you slack out the wire just enough so that part of the strain is on this preventer wire and part of the strain is on the drum of the winch. Is that all right?

Mr. McKeon: Intelligent to me.

The Witness: It is just to ease the strain on the drum of the winch.

Q. It is an added precaution?

A. That is correct, sir. [33]

Q. Did you have one of them on——

A. Yes, we did.

Q. On the night of the 15th, how would you characterize the weather you had?

A. Yes, the night of the 15th it was blowing very, very hard.

Q. Was it of gale proportions?

A. Yes, we considered it a whole gale, a whole gale is a force of 10 or 60 or 70 miles an hour, or 60 miles an hour anyway. And it is such force that the tops of the seas are blown off; as the seas build up the wind will sweep the top off. The seas, of course, build up very high under winds like that. We were holding the ship; of course she was laying broadside in the seas and to the wind, and we couldn't go full speed ahead because if we tried to go ahead on the engines too much, it got too much strain on the wire, would tend to pull the chain and wire completely out of the sea, so as we were pretty far off shore we were able to ease down a bit to keep the wire from parting and we

(Testimony of James Ralph Reichel.)

were making sternway, of course, going ahead on our engines, but actually going backwards over the bottom.

Q. Did the Neptune arrive on that night?

A. The Neptune arrived that night, yes.

Q. That is the 14th. She apparently got a line to the Herald that night?

A. Yes, the Neptune made several passes on the ship. Of course, we were laying off to one side and we could see her and [34] they tried to pass them a line up to the Herald of the Morning. By radio contact with the Neptune we knew she was attempting that and it had——

Mr. Morse: Just a moment. We object to that.

The Witness: O.K., I am sorry.

Mr. Morse: Did you personally observe these things?

The Witness: No, I said by radio contact, sir, we were advised such and such happened.

Q. (By Mr. McKeon): Talking about a radio contact, you mean telephone?

A. Radio telephone, yes.

Q. Radio telephone.

A. But we saw him maneuver near the side of the Herald of the Morning.

Q. She didn't succeed in getting a line aboard that night, did she?

A. Well, she did not take him in tow.

Q. What happens to a tug when she is in irons?

A. Well, when a tug is in irons, it is in a position

(Testimony of James Ralph Reichel.)

where you can't steer it, you can't handle it. In other words, assuming that you have the rudder hard left and the engines going ahead and she will still tend to go to the right, the bow of the boat will fall to the right. In that case you are in irons.

Q. Pretty much powerless?

A. Yes, you can't maneuver your boat. [35]

Q. Was your tug in irons that night?

A. Yes, it was.

Q. And on other occasions of this service, was your tug in irons?

A. Yes, it was several times during the——

Q. Now, the Balsam was standing by there throughout the night of the 15th, too?

A. Yes.

Q. Was she standing off, or where? Was she cruising around, maneuvering around?

A. Cruising around. At times she would come fairly close, other times she would get as much as a mile or so away.

Q. Were you able at all to control the tow in that weather in the sense of having absolute control over her?

A. No, we didn't have absolute control over her, but still had a hold of her so that she wasn't just drifting absolutely free.

Q. Yes. Well, you were doing the best you could on your tug to keep hold of her?

A. Yes, that was our intention.

Q. Now, on the early morning of the 16th, that

(Testimony of James Ralph Reichel.)

is after midnight of the 15th and the early morning of the 16th, did these same weather conditions that you have described to us continue?

A. Yes, the weather conditions continued on through the night. [36]

Q. And what happened to your towing wire on the early morning of the 16th?

A. Early that morning it finally parted.

Q. Where did it part?

A. It parted right at the fair leads.

The Court: Where?

The Witness: Right at the fair leads on the winch drum.

Q. (By Mr. McKeon): That is——

The Witness: When the wires——

Q. (By Mr. McKeon): ——those two up-right—— A. Yes.

Q. Referring to Exhibit, Libellant's Exhibit 4 again, the fair leads are those two roller-like things that the towage board now appears to be in front of?

A. That is right, yes. The wire was coming around this way (indicating) and leading off on an angle out here and it parted right there (indicating).

Q. About how far astern of the fair leads would you say?

A. Parted right on the fair leads. The wire finally smashed itself right there until it parted.

Q. Will you give the Court a description of how that cable or wire appeared after she parted?

(Testimony of James Ralph Reichel.)

A. Well, we knew it was getting bad because as strains kept coming in the wire kept flattening out, flattening out instead of being round, got more and more out of shape, got down like [37] that (indicating), and finally hit one tremendous surge that just parted it right there.

Q. There wasn't any place where that wire there was parted? It was the chafing?

A. No, it was—there was no movement to that wire at that time because the drum had been securely blocked previously to that and the wire was just standing there.

Q. Now, prior to the time that your wire parted, were you having any difficulty in keeping out of irons?

A. Oh, yes, we were practically in irons most of the time. Every once in a while we would work out a little bit, but in irons most of the time.

Q. During that time state whether or not you were shipping seas?

A. Yes, we were taking seas aboard, the after-deck was awash constantly.

Q. Did you have a strain on that wire before she parted?

A. Well, the same strain that had been on there for the preceding couple of days.

Q. Well——

A. A constant strain on there.

Q. Was the strain sufficient—I think maybe you

(Testimony of James Ralph Reichel.)

have testified it was sufficient to lift the entire wire and anchor chain clear out?

A. Yes, between the seas, bring the whole business out of the—— [38]

Q. Now, after that wire parted, what happened to the Herald?

A. Well, she went drifting down with the wind. Of course, we followed along behind it throughout the night.

Q. Was she drifting broadside?

A. She was drifting mostly broadside, yes.

Q. Was she high out of the water?

A. Yes, she was very high; she was a light vessel and correspondingly high.

Q. You mean, a light vessel—you mean without cargo? A. Without cargo.

Q. Or ballast? A. Yes.

Q. Was the Neptune standing by then, too, at the time the wire parted?

A. Yes, she was within, oh, I would say, half a mile or a mile radius of where we were.

Q. And where was the Neptune—where was the Balsam?

A. She was in the same vicinity.

Q. Same general vicinity? A. Yes.

Q. I assume that it isn't too good to get too close to a vessel in that situation?

A. No; you wouldn't want to get any closer than was necessary to keep them in sight.

Q. Could you give us an estimate of how the blow was that night [39] in miles, let us say?

(Testimony of James Ralph Reichel.)

A. Well, of course, as you know, my own estimation, which I would say—I would say it was blowing 65 miles an hour, approximately. I say approximately through my own estimation. I should say 65 miles an hour. I had no device for measuring.

Q. And how was the height of the seas at that time?

A. Well, again I would estimate the seas between 30 and 40 feet high. I know that after the wire had parted, the Neptune was laying alongside of us and between the seas we couldn't even see the tops of her masts.

Q. During the time you put out after the Herald, did the same weather conditions continue?

A. I didn't understand that.

Q. After the wire parted, you were put out after the Herald, she was drifting, as I understand it?

A. Yes.

Q. Which way was she drifting, toward shore or out to sea?

A. She was drifting up the coast and toward the shore; not directly, but on an angle.

Q. Did the same weather conditions prevail?

A. Yes, those conditions prevailed throughout the remainder of the night.

Q. Now, the next morning at daylight did the Neptune attempt to get a line aboard the Herald?

A. Yes, we were watching the Herald of the Morning, of course, [40] the Neptune and the Coast Guard cutter.

(Testimony of James Ralph Reichel.)

Q. Will you tell the Court just exactly what happened?

A. Well, the Neptune—we were laying back astern and on the port quarter, which would be the ship over here (indicating), and we were back here, and we were watching it, drifting down together, and the Neptune went up to the Herald of the Morning and was attempting to put a line on his bow. And he was there quite a long time and we could see lots of activity, both on the bow of the ship and on the towboat, and——

Q. This was at daylight?

A. Oh, this was daylight, yes. The weather had moderated a bit, but still plenty rough and very high seas. And they seemed to have a wire up to the ship from our viewpoint, and there was lots of maneuvering back and forth for a period, seemed like almost an hour, and then all of a sudden the two vessels came together and the bow of the Herald of the Morning struck the starboard side of the tug and as soon as they hit, of course, they drifted apart.

Q. Then what did you do on your tug? What did your tug do after that?

A. Well, we were—had our radio set to the other vessel. We were listening to the talks going back and forth between the Coast Guard cutter and the boats on the scene and the master of the Neptune said that he had been struck and he had been out of the scene a little while and he, as he drifted

(Testimony of James Ralph Reichel.)

clear, and in [41] a couple of minutes he said that they were in a serious condition and needed a collision mat and would the Coast Guard supply them with a collision mat. This is all by radio, you understand; we were listening in on these conversations, and the Coast Guard said yes, they did, and they maneuvered both boats around until they got the collision mat passed over to the Neptune. By that time she was way down, her decks were awash, her boat deck was awash, one side; she was listed over, and it was too late for the collision mat to be of any use to them, you see. Mind if I explain what a collision mat is?

Mr. Morse: We are all interested.

A. A collision mat is a mat which is put on the outside of a ship to fill up a hole in a side of that ship and as long as there is air inside the vessel and the water running in, it will tend to suck in on that position, but once it is filled in it won't do any good, no suction to hold it there. That was the condition that had come before they got the collision mat so they could not use it.

Q. Well, after that did you stand by the Neptune?

A. Oh, yes. We cleared our lifeboat away and got our life-saving equipment we had aboard ready to use in case they started to go down, and just stood by, waited to see what happened. We were very close to the Neptune at this time. In fact, we were so close that Captain Sprague there called over to us just by voice and said, "You better

(Testimony of James Ralph Reichel.)

tell the Coast Guard to come [42] over and get us off." So we radioed the Coast Guard and they came over and removed the crew of the Neptune to the Balsam.

Q. By what means was that done?

A. Well, they used a rubber liferaft—a rescue raft would be a better word.

Q. They did get a line to the Neptune and by means of that line running to the Balsam, they floated the liferaft?

A. Floated back and forth between the two in a never-ending line. It was a double line——

The Court: A double line?

The Witness: Yes, sir, one line to pull it over and one to pull it back.

Q. (By Mr. McKeon): The men of the Neptune were removed from the Neptune, aboard the Neptune, in what manner?

A. Two at a time when they got the entire crew off, except the captain, and he came at the last by himself.

Q. That was Captain Sprague? A. Yes.

Q. And what eventually happened to the Neptune?

A. Well, when they got all aboard the Balsam they contacted us by radio and told us to stand by the Neptune until such time as she sank and that they were going down to the Herald of the Morning; she had just almost disappeared over the horizon by that time. So we stood by and waited

(Testimony of James Ralph Reichel.)

until the Neptune sank. She was a menace to navigation there without someone to [43] show where she was.

Q. Did the commander of the Balsam direct you to stand by the Neptune?

A. Yes, that was his orders to us.

Q. At the time the Neptune sank, or up until she sank, the Balsam was not standing by?

A. No, she had disappeared in the direction of the Herald of the Morning.

Q. The Herald of the Morning was drifting, was she?

A. She was out of sight by the time the Neptune sank.

Q. Yes. And then after the Neptune sank and you were finished with that assignment, what did you do, talking about your—I mean your tug?

A. Yes, I know. We immediately contacted the Balsam again to see what they were doing, see what was next in line. So they reported that they were at the scene of the Herald of the Morning, that she was drifting, so we asked where she was drifting and we were advised that her present course and rate of drift, she would be aground by midnight. So we made for that position, set our course for that position where she was at that time.

Q. And did you eventually come up to the Herald of the Morning and the Balsam?

A. Yes, we came up to the scene there and of course the Herald of the Morning was still drift-

(Testimony of James Ralph Reichel.)

ing and she was getting in rather [44] shoal water, so we went alongside the C-2, that is, the Herald of the Morning at that time and advised them to drop the anchor and see if she would hold there for the night. Of course, we knew there was more aid and assistance coming the next day.

Q. Then you spoke to the Herald?

A. Yes, we went right up alongside as close as you can, within reason.

Q. Yes, shouted through a megaphone.

A. Shouted through a megaphone and also tried to pass messages by flashing lights.

Q. And were you on deck at that time?

A. Yes, I was.

Q. Was any direction passed on to the people on the Herald?

A. Yes, we passed on directions to let go of the anchor at that time and the vessel did not want to let go of the anchor for some reason. After much arguing back and forth we accepted responsibility for the anchor, feeling the anchor wasn't worth as much as the ship, and he let go of the anchor.

Q. That was the port anchor?

A. That was the port anchor.

Q. Did you give any directions as to how many shots of chain?

A. Yes, I recommended a drop, they drop nine shots, to leave one shot in the lock, which eventually was done.

Mr. Morse: For the Court's information, a shot is 15 [45] fathoms, 90 feet? A. 90 feet, yes.

(Testimony of James Ralph Reichel.)

Mr. McKeon: Concurred.

Mr. Morse: I wanted to ask myself.

Q. (By Mr. McKeon): Finally they let go that port anchor? A. Yes.

Q. And did that vessel drag that anchor?

A. When they first let go, I don't think they dropped quite nine shots. It appeared to us to be dragging, rather hard for us to tell, so we went back again and asked that they drop nine shots. At that time she seemed to hold. Of course we were afloat ourselves, it was pretty hard to tell, but we checked with the Balsam, which was lying alongside there at the time through the night to make sure she was holding and he claimed she was holding and they did not appear to be getting near the beach, so I guess they were holding.

Q. After your arrival there, did you attempt to get a line to the Herald?

A. Yes, we maneuvered up alongside of her star-board side, forward end, and just laid broadside with them and fired a shot toward the vessel. Of course, it was very dark that night and lots of line, and the shot line did not get on the vessel, so they couldn't take anything from us.

Q. When you say a shot, you mean a Lyle gun?

A. Used the Lyle gun and aimed it for the deck of the vessel, [46] the forward deck of the vessel, to fire a line across to the men on the vessel so that we would have a line between the two of us.

Q. There is a line attached to that shot?

A. Yes.

Q. And carries——

(Testimony of James Ralph Reichel.)

A. It carries that line across, yes.

Q. Going back to the time that your wire parted on the early morning of the 16th, at that time was your wire made fast to your towing bitts or your drums? Was it on the drum?

A. The wire was made fast to the drum.

Q. It was on the drum? A. Yes.

Q. It was not on the towing bitts? A. No.

Q. We come to the 17th. How were the weather and seas early that morning? This is the morning after you caught up again with the Herald?

A. Well, the seas were beginning to go down in size at that time, but it was still blowing.

Q. Now, that day the Balsam left the scene and took the survivors of the Neptune ashore?

A. I assume they did. They left the scene.

Q. They departed. They admitted, of course, that is what she did? [47]

Mr. Morse: Yes, we have the testimony of the Coast Guard vessels, which identified the exact times they left and what they did, and so forth.

Q. (By Mr. McKeon): Now, on the early morning of the 17th the Coast Guard cutter Winona arrived on the scene, did she not? A. Yes.

Q. And prior to the arrival of the Winona, what were you doing the balance of the night of the 16th and early morning of the 17th?

A. Just kept cruising around in the ship, just holding our position somewheres near where we could keep a good view of her, but still not coming in contact with her.

(Testimony of James Ralph Reichel.)

Q. As you said two or three times alongside, you don't mean literally alongside the vessel?

A. I guess I should clarify that. It is to stay far enough away so that you wouldn't come together and hit each other.

Q. Now, what, if anything, did the Winona do some time after her arrival on the morning of the 17th?

A. Oh, the Winona passed a manila line from her stern to the bow of the vessel.

Q. Of the Herald?

A. Of the Herald of the Morning, and then she shot a line over, this is a small line, and to another line, about four lines are used eventually—they passed the bitter end of the hawser to us. [48]

Q. Was that a 12-inch manila line?

A. A 12-inch manila line.

Q. Did the Winona anchor out ahead of the Herald?

A. Yes, she anchored and slacked out with her chain against the bow.

Q. Did she shoot a wire to the Herald?

A. Shot a small line, heavy lines to follow.

Q. And then she did the same with you?

A. That is correct.

Q. And you then took the bitter end of that twelve-inch hawser and made it fast on your towing winch?

A. We made it fast to the base of our towing machine.

(Testimony of James Ralph Reichel.)

Q. To the base of your towing machine?

A. That is the strongest point on the towboat, is the—of the towing machine.

Q. And then what did you do after you made that manila fast with respect to the Herald?

A. Maybe I should clarify it first. What we did was, we had a double pennant aboard which had a big ring in one end and of course eyes on the other ends, and we made the manila fast to this double pennant, made the pennant fast to the base of the towing machine in such a manner that the wire, only the wire would touch the vessel, touch our vessel.

Q. Then what did you do after you——

A. Then we just lay out ahead of them to get a slight strain [49] on slow speed ahead on our engines to relieve the weight on the anchor.

Q. You mean helping to relieve the strain on the anchor gear?

A. Yes, we went slow ahead on our engines. That took part of the strain off of the anchor, which was holding the ship.

Q. That was that port anchor that the Herald had down? A. That is correct.

Q. During that afternoon, that day, what have you to say with respect to the weather and seas, if anything?

The Court: 17th?

Q. (By Mr. McKeon): The 17th, your Honor, yes.

(Testimony of James Ralph Reichel.)

A. That is the same day we took the line from the Winona.

Q. While laying there holding onto the Herald?

A. Well, the weather was improving at that time.

Q. How about the seas?

A. Well, the seas were going down gradually. Of course, the wind will cut off long before the seas will go down.

Q. How about the swells? Were there any swells? A. The swell was still running.

Q. Approximately how long did it take the Winona to get that line fast aboard the Herald and the bitter end to you, approximately?

A. Two or three hours, I would say, approximately, but I wasn't watching a clock at the time.

Q. Did the Winona stand by during this time while you were [50] holding onto the Herald on the 17th?

A. Yes, the Winona stood by until that night when she disappeared, and then the Balsam returned.

Q. Yes. Some time during the night, you don't know just when?

A. I don't recall the exact time.

Q. Did the wind come up again on the night of the 17th, if you can recall?

A. I don't recall.

Q. You want to refresh your recollection?

A. I could by looking at the log. At the present time I don't recall. What day was that?

(Testimony of James Ralph Reichel.)

Q. 17th.

A. According to that log, my log entries here, the weather eased down that evening.

Q. Eased down. Now, we come to the 18th. What time did the Hercules arrive?

A. The Hercules arrived that morning, oh, I don't know exactly what time it was, about 4:00 or 5:00 or 6:00.

Q. Early morning?

A. Early morning, before dawn.

Q. That is close enough. Was the Balsam standing by then when the Hercules arrived?

A. I don't recall.

Q. At daylight did the Hercules attempt to get a line aboard the Herald? [51]

A. Yes, the Hercules went up along the vessel and maneuvered around her bow—talking about this alongside again. I am sorry, I should make it more clear, I presume.

Q. No, I just don't want any misunderstanding.

A. Maneuvered as closely as he could, possibly could, in order to pass this heavy wire from the stern of his vessel to the bow of the ship.

Q. Do you know how many attempts she made, that is, the Hercules? A. I don't recall.

Q. Maybe I better show that by other witnesses. She eventually got a line aboard?

A. Eventually she had a wire up and paid it out.

Q. Did she shoot that, so far as you know?

A. I do not know.

(Testimony of James Ralph Reichel.)

Q. Now, in your opinion, did the presence of all your manila hawser there to the Herald, impede or interfere with the maneuvers of the Hercules in attempting to get a line aboard?

A. Yes, it would, because she came up on the bow, she would be unable to cut across from the other side because of our line leaving the head of the vessel.

Q. It was an added danger to the situation?

A. Yes, if she came in on one side, have to completely turn around and come out the same [52] way.

Q. Did you observe whether, when the Hercules was undertaking this task, whether or not she was taking any seas or whether her decks were awash?

A. No, I could not see her stern.

Q. In doing what the Hercules did in those conditions, or under those conditions, would you state to the Court whether in your opinion she was running any risk of loss or damage or injury?

A. Well, yes, the same thing could happen to her as happened to the Neptune. She could strike the vessel or the vessel strike her and could cause damage or loss to the vessel, or passing of a wire is a dangerous job because it can cause loss or injury of men aboard the towboat, too.

Q. It wasn't as great a risk as the Neptune was alleged to take?

A. No.

Q. Now, after the Hercules secured her wire aboard the Herald and it was made fast aboard the Herald, what happened?

(Testimony of James Ralph Reichel.)

A. That took quite a long time to get completely shackled up and to pay out the wire, and in the meantime the weather was increasing, the seas were coming up again and the wind was increasing, so as we were laying on the head of the vessel, just going slow ahead, well, we got to the position where by having our rudder hard over we still couldn't hold our position ahead. [53]

Q. Did you get in irons again?

A. Started to come in irons.

The Court: This was the 17th?

Mr. McKeon: No, this is the 18th, your Honor.

A. (Continuing): We were going to start towing again.

The Court: That would be the 18th?

The Witness: The 18th.

Mr. McKeon: The Hercules had arrived, your Honor.

The Court: All right.

A. (Continuing): And of course he paid out his hawser until he had used the same amount of hawser as we had manila out, laying alongside each other, and both of us were trying to keep clear of each other, but as we had our rudder hard right, coming in with the engine, we started going to the left and coming completely around.

Of course, we contacted the Coast Guard and told them to let the people on the ship know, let go of their anchor, the chain, space the chain so that we can pull the ship around and get under way, but

(Testimony of James Ralph Reichel.)

then there was some sort of difficulty and couldn't get the chain away. So——

Q. That is the chain on the—anchor chain on the Herald?

A. On the ship. So we swung right around to the position where the ship was heading in one direction and both towboats were headed the other direction, stern to stern. In other words, the stern of both boats were in line with the stern of [54] the Herald of the Morning. Is that clear?

Mr. Morse: Is it clear to the Court?

The Court: So far as—only accepting his statement.

Mr. McKeon: What the witness has asked, is that clear? I think he has in mind, has he made it clear what the difficulty was between the two tugs?

The Court: You just tell us what you observed.

The Witness: Yes, that is what happened, so we—and then with the ship heading in this direction and us heading in this direction and the manila line was laying from the bow of the ship right alongside the ship and back up to our stern.

Q. Both tugs were in irons?

A. That is correct.

Q. Was there danger of a collision between the two tugs at that time?

A. Oh, yes, very great chance that we could come together.

Mr. McKeon: I don't know whether your Honor wants to adjourn at this time. I am not quite——

The Court: I will run further if you wish.

(Testimony of James Ralph Reichel.)

Q. (By Mr. McKeon): What did they eventually have to do, if you know?

A. All I know is what I heard through the Coast Guard radio.

Q. If you don't know of your own knowledge——

A. I know the chain was eventually let go.

Q. That is the anchor chain? [55]

A. Yes, and——

Q. They let the anchor go to the bottom?

A. The ship came around and followed behind us and we proceeded up the coast.

Q. You and the Hercules?

A. The Hercules and the Sea Fox towing together.

Q. Now, after the men on the Herald let go of that port anchor chain, that did mean that that port anchor was on the bottom?

A. Oh, les, the anchor and the chain attached to it.

Q. The chain and everything went?

A. Yes.

Q. In that situation the Herald then was without a usable anchor?

A. That is correct, nothing visible, no chain visible.

Mr. McKeon: Well, I think that would be admitted, Mr. Morse.

Mr. Morse: Yes, we admit they only had one usable anchor.

(Testimony of James Ralph Reichel.)

Q. (By Mr. McKeon): From that time on she was helpless so far as the use of the anchor is concerned? A. Yes.

Q. You were far enough away from the stern of the Herald at the time they let the chain go that you weren't imperiled by length of chain?

A. No, we couldn't see the chain being let go because we were laying with our stern to the stern of the vessel. [56]

Q. Do you know what happened to the starboard chain on that ship?

A. The starboard chain had been used up in the previous towing attempts, at least we assumed it was all used.

Q. She was then without any chain on the starboard side or any chain on the port side?

A. That is correct.

Q. And as a result, neither the Hercules nor the Sea Fox could make any hawser fast to that anchor chain?

A. No, we—I shouldn't say we—passed, but the line we made fast to was passed onto his deck and how she made it fast we don't know, because we could not see up there.

Q. The same thing is true of the wire of the Hercules that had been passed up, that it was made fast some place on the deck?

A. Disappeared on deck, don't know how it was made fast.

Q. And of course, that isn't as desirable a

(Testimony of James Ralph Reichel.)

method of making fast a towing wire as if you had the anchor chain?

A. Oh, no, because there is no spring action which the anchor chain will give to it.

Q. In your judgment, would it be prudent in those conditions to start out with towing the Herald with a twelve-inch manila hawser?

A. It was not; at that time we switched and put the twelve-inch hawser on we did not think it would be good seamanship to proceed on that alone. [57]

Q. And your towing machine at that time had been so damaged that it wouldn't have been used by you except in a desperate situation, I assume?

A. We could not have used the towing machine at all, because we couldn't have turned the drum.

Q. After you got under way, you and the Hercules got under way with the Herald of the Morning, made fast as you have described it, please tell the Court what you experienced, the weather conditions.

A. Yes.

Q. And so on.

A. As I mentioned before, when we first started out, the weather was increasing and it continued to increase throughout the rest of that evening and that night, and it blew pretty hard, blew, I should say, 60 miles an hour at that time, and following seas which would occasionally come aboard our stern of the boat and fill up the afterdeck and then run off, but we were proceeding up the coast at—I know that we were towing at reduced revolutions

(Testimony of James Ralph Reichel.)

to minimize the strain on that manila so we couldn't part it.

Q. Bearing in mind that blow and also having in mind the position in which the Herald was anchored, the port anchor, in your opinion, do you think if the Herald had remained at anchor that she would have been able to weather that blow?

A. Well, in my opinion, I would say no, she wouldn't. I know [58] that I would not care to be aboard the ship that was laying there with one anchor.

Q. In that sort of a blow?

A. In that sort of a blow; there is a good possibility she would drag.

Q. Well, the possibility she might carry the anchor away, too, isn't there?

A. That is a possibility, too. Most likely she would drag the anchor.

Q. Apart from that night on the 18th, when you encountered that blow, have you anything else to tell us with regards to the events of the balance of the voyage on to Everett?

A. Well, when we got around Cape Flattery and the Straits of Juan de Fuca, so we got up—I forget—when we got in the Straits and we noticed the ship kept laying to one side and couldn't quite figure out what was doing that, but we had noticed when the ship was at anchor her rudder was banging back and forth and it must have gotten jammed over on one side or the other, hard over, which,

(Testimony of James Ralph Reichel.)

as we were pulling her, the water tended to force the ship out to one side, but that was no great problem; we just allowed for that and got up to Everett all right.

Q. By the way, was that rudder lashed securely when you started out from Oakland?

A. Well, I assume it was, sir. I did not inspect the vessel. [59]

Mr. McKeon: I think it will be admitted, Mr. Morse, that they tried to make it fast?

Mr. Morse: Yes.

Mr. McKeon: Secured that rudder——

Mr. Morse: We will even stipulate it was made fast.

Mr. McKeon: Yes. Just don't like to be going into things that there can't be any question about, if I don't have to.

Q. About what time did you put her alongside in Everett?

A. Oh, it was early evening, I guess.

Q. The 19th?

A. About 7:30 or 8:00 o'clock at night.

Q. That was the 19th?

A. I would have to check again on the dates.

Q. Please.

A. Yes, down here 9:30, vessel alongside dock.

Q. On the 19th? A. The 19th.

Q. And what time did you get back, arrive back in San Francisco?

A. It was about the 24th or 25th—just a second. The 24th.

(Testimony of James Ralph Reichel.)

Q. Of November? A. November.

Q. During these times of very heavy weather that you have described, will you tell the Court whether or not the personnel of your tug was in any danger? [60]

A. Yes, the personnel were in danger of being washed aboard when working down on the after-deck, of course working down by the towing machine, the time that that tremendous strain was on the wire. There was always the possibility that wire parting at that time and the loose ends flying around and hurting the men, or worse. Of course, there was always the possibility, too, of the boat actually floundering.

Q. You actually were shipping green seas, were you? A. Yes.

Q. With only one anchor in use and without any power or rudder, would a vessel of the size of the Herald be, in your opinion, in any danger after a towing hawser parted

A. Yes, she would be in great danger if she were drifting toward a leeshore; drifting offshore, it would have been all right, because they could have drifted for days, no damage happen to them.

Q. But if you are drifting toward the shore——

A. If you are drifting toward the shore, they are in great danger.

Q. How was she drifting in this case?

A. In this case she was drifting toward the shore.

(Testimony of James Ralph Reichel.)

Q. In towing at sea, have you had occasion to experience the necessity of easing down on your engines and slowing down on your engines and sort of nursing the tow along?

A. Oh, yes, that happens often when seas increase in size. [61]

Q. And why is that necessary?

A. Well, if you reduce the number of revolutions on the engines, you reduce the strain which is imparted upon your towing machine, your towing wire and your shackles and the entire towing gear.

Q. Yes. Did you follow that practice on this voyage? A. Yes, we did.

Q. Do you know whether or not your tug was in communication with weather stations while you were proceeding?

A. Yes, as we proceeded up the coast we listen to the weather reports which come over every morning and every evening.

Q. Have you towed vessels at sea with the same type tug as the Sea Fox? A. Yes, I have.

Q. Frequently? A. Quite a few trips.

Mr. McKeon: I think that is all.

The Court: We will take an adjournment until 10:00 o'clock tomorrow morning.

Mr. Morse: Mr. McKeon, you will have the log available tomorrow?

Mr. McKeon: Yes.

(Thereupon an adjournment was taken to tomorrow, Thursday, January 18, 1951, at 10:00 o'clock a.m.) [62]

Thursday, January 18, 1951—10:00 A.M.

The Clerk: Puget Sound Tug & Barge Company v. Waterman Steamship Corporation, for trial; and Shipowners & Merchants Towboat Company v. Waterman Steamship Corporation, for trial.

Mr. Morse: Ready.

Mr. McKeon: Ready.

JAMES RALPH REICHEL

resumed the stand on behalf of the libelants; previously sworn.

The Clerk: James Reichel on the stand, heretofore sworn.

Mr. McKeon: If the Court please, Mr. Morse and I have discussed the matter of filing the amendment to the Shipowners' libel to join as a party libelant the tug Sea Fox Corporation, the name of which is on the certificate of title. I don't think it is strictly necessary, but there is no objection to doing it, stipulate it may be deemed amended to include the owner of the tug Sea Fox and I will file a formal amendment.

Mr. Morse: So agreed.

Mr. McKeon: I have one or two questions.

Direct Examination

(Continued)

By Mr. McKeon:

Q. Mr. Reichel, what was the condition of the wire when you first departed?

(Testimony of James Ralph Reichel.)

A. Condition of the wire when we left San Francisco?

Q. Yes. A. It was a good wire. [63]

Q. With regard to the way the Herald was acting, will you describe that to the Court, in the bad weather?

Mr. Morse: At which time now, Mr. McKeon?

Mr. McKeon: Well, let us take the time that you first ran into some heavy weather. I think you said off Point Arena. What was she doing and how was that reacting on her?

A. The Herald of the Morning was shearing from side to side across our stern. She first lay over to the starboard side and then lay to the port side.

Q. Running up on you——

A. Running way over to the side and tend to run up and fall back and up on the other side.

Q. What was the effect of that upon that towing wire?

A. Well, it causes the wire to travel back and forth across the stern of the boat, being off first one side and then the other side.

Q. At that time did you lose your towing board?

A. Yes, our towing board went overboard.

Q. What was the prime cause of the tow acting that way?

A. Well, the force of seas and winds upon the ship tended to make it lay first one way and then the other way.

(Testimony of James Ralph Reichel.)

Q. Anything the tug could do about that?

A. No, nothing you could do.

Q. Did you have any trouble with your steering engine——

A. No. [64]

Q. ——on the Sea Fox? A. No.

Q. In your judgment, would it have been wise, a prudent or good seamanship, to try to put into the Columbia River, across the Columbia River bar at any time after you had gotten the bad weather, the 13th, 14th, 15th and 16th?

A. No, it would be impossible to cross the bar in heavy weather. The only time you cross the bar is in good weather.

Q. And in what you were experiencing during that time, in your judgment would it have been prudent to have attempted to go in?

A. No, it would not. The best thing we could do would be to hit for the offshore, get more seaway.

Q. Is that what you did?

A. That is what we did.

Mr. McKeon: That is all.

Cross-Examination

By Mr. Morse:

Q. Captain, what year was it that you obtained your master's license? A. 1945.

Q. Have you served as a master of sea-going tugs? A. Not on a sea-going tug, no, sir.

Q. You have served as mate? A. Yes, sir.

Q. And for how long a period prior to this incident did you [65] serve as a mate?

(Testimony of James Ralph Reichel.)

A. Two years.

Q. You started serving as mate some time in 1946?

A. That is correct, sir.

Q. Prior to that time had you served in any other capacity in a sea-going tug?

A. No.

Q. When towing a vessel such as the *Herald of the Morning*—by the way, the *Herald of the Morning* was at that time a baby flat-top carrier, wasn't it?

A. No, sir, I don't—I think she was a cargo ship, used as a troop transport cargo ship. I think she was a C-2 type vessel.

Q. Then I wish my opening statement corrected, as I think I said she was a baby flat-top carrier. She was a Navy type transport of some character?

A. Yes, sir.

Q. Which is a C-2 hull?

A. Yes, sir.

Q. Now, will you explain to the Court what a C-2 type vessel is? It is a pretty big cargo vessel?

A. Yes, a C-2, not having served upon them, I don't know how long they are, but approximately 400 feet long.

Q. I think probably the Judge is familiar with the so-called Liberty-type vessels which were built during the war. The C-2 [66] type vessel is a little bit larger?

A. Just a slight bit larger than a Liberty.

Q. So we are talking about a big sea-going vessel, aren't we?

A. Yes, sir.

Q. Now, have you ever towed or been aboard a

(Testimony of James Ralph Reichel.)

tug which has towed a large cargo vessel in a previous instance? A. Yes, sir, I have.

Q. And how was the tow hookup made in those previous instances?

A. In the previous instances we towed in the same manner we towed the Herald of the Morning.

Q. So that one anchor chain was used to which your towing wire was attached?

A. That is correct, sir.

Q. So is it a fair statement to say that it is a customary practice when towing these large vessels to use one anchor chain in the tow makeup?

A. Yes, it is.

Q. And therefore, there would normally be only one anchor available to anchor the vessel in the event of distress? A. That is right, sir.

Q. That would be a customary practice?

A. Yes, sir.

Q. Now, after you had gotten out of San Francisco on this voyage, what length towing wire—what was the distance between the Herald of the Morning and the Sea Fox when you were all [67] set for your tow?

A. Well, 1,000 to 1,200 feet, approximately.

Q. Well, would it vary?

A. No, sir, but I didn't measure it as we paid out the wire.

Q. Now, what portion of that overall distance was wire and what portion was anchor chain?

A. Well, I should clarify myself, before I was

(Testimony of James Ralph Reichel.)

figuring only just the amount of wire out being 1,000, 1,200 feet. I think the ship had two shots of chain in the water, probably three shots of chain out.

Q. Three shots of chain? That would be 45 fathoms? A. I believe that is what was done.

Q. Three shots of chain, 45 fathoms—now, I understood you earlier, you said your towing wire was 1,200 feet?

A. Approximately, yes, sir.

Q. And as I also understood you, you had about half your towing wire on the winch in order to secure the towing wire to the Sea Fox?

A. No, sir. Under usual conditions, which that was, the usual conditions, then we leave $21\frac{1}{2}$ turns on the drum to secure it with.

Q. And about how many feet would two and a half turns be? Less than 50 feet, I assume?

A. No, sir, I would have to think for a second on that. I would say 200 feet. [68]

Q. All right. Say you have 200 feet. What is the dimension of your drum, the diameter of your drum?

A. Oh, three to four feet. It is very hard to picture it just exactly how big.

Q. All right. Well, irrespective of that, you were using roughly, say, 12, say 1,000 feet of wire from the stern of the Sea Fox? A. Yes, sir.

Q. And would you say that was the proper length of wire under the circumstances?

(Testimony of James Ralph Reichel.)

A. Yes, sir.

Q. If you used a shorter length of wire, you would have more trouble with your—danger of breaking your towing wire, isn't that correct?

A. Yes.

Q. And the purpose of the length is, plus the chain, is to act as a strain, isn't it?

A. That is correct, sir.

Q. Now, you were north of Drake's Bay when your wire broke, weren't you? A. Yes.

Q. And where did the wire break?

A. Oh, I would say we were about thirty miles south of Point Arena.

Q. All right. My question was directed more—was it close to [69] the drum or toward the chain or where was it?

A. No, it was by the stern of the boat.

Q. Right where the chain goes over her stern board?

A. I think where the wire goes over the stern.

Q. I beg your pardon? A. Yes, sir.

Q. What weather were you experiencing at that time?

A. At that time we were experiencing very rough weather.

Q. Do you have your log there?

A. No, I do not.

Mr. McKeon: I have it.

Q. (By Mr. Morse): While Mr. McKeon is getting the log out, how long a period have you

(Testimony of James Ralph Reichel.)

sailed along the coast between here and Puget Sound?

A. Well, I was with the American-Hawaiian Steamship Company prior to the war for quite a while, and after the war, and we sailed intercoastal. Part of our trip was, of course, from here to Seattle.

Q. It is a fair statement to say that the Pacific off the coast of Oregon and Washington does experience pretty heavy weather in the wintertime?

A. At times, yes, sir.

Q. Would you say that November is a calm season of the year in that area?

A. No, sir, I wouldn't say it was a calm season, no. [70]

Q. Storms might normally be anticipated?

A. Well, going to sea you can expect a storm any time, any place.

Q. I appreciate that, but from past experience, November is a season when storms are expected in that area?

A. I would say the storms can be expected, yes.

Q. Now, turning to your logbook, turn to the date when the towing wire broke, north of Drake's Bay.

A. Yes, sir, November the 7th.

Q. What time was it that the towing wire broke on that date?

A. 3:15.

Q. In the morning?

A. No, p.m.

Q. What was the wind force at that time?

A. Let's see. I don't see any—let me read this. Well, all I can give you is the watches, 4:00 to 8:00 watch, 8:00 to 12:00 watch.

(Testimony of James Ralph Reichel.)

Q. Very good. That is——

A. Two reports at that time, 4:00 to 8:00 watch says, “Fresh to strong northwesterly breeze, rough sea and heavy swell.”

The Court: What is the other?

The Witness: You want the rest of it? “Tug rolling heavily. Tow lying in trough, making one knot sternway.”

8:00 to 12:00 watch: “Strong northwest wind, big sea and swell. Tug rolling heavy.” [71]

Mr. Morse: I would like to have this log marked for identification, if the Court please.

The Court: It may be admitted and marked.

Mr. Morse: Now, after the line broke south of Point Arena there, did the Sea Fox tow the Herald of the Morning back into Drake’s Bay?

A. We went back along the side of the ship, next to the ship and spoke to the ship, and they had to clear the anchor chain, the part that was hanging in the water. That took quite a bit of time, quite a hard job to do, so they worked practically all that night until the following morning. The following morning we passed them a wire and then we started with them, but our wire got caught on our drum, so we held them until the Sea Prince came out and the Sea Prince took them in tow into Drake’s Bay.

The Clerk: Respondent’s Exhibit A marked for identification.

(Whereupon the log above referred to was

(Testimony of James Ralph Reichel.)

marked Respondents' Exhibit A for identification.)

Q. (By Mr. Morse): What happened to the approximately 1,000 feet of wire which was on the end of the chain? Was that recovered or was that dropped in the ocean?

A. No, sir, when that let go the anchor chain, of course that wire and the chain went straight down.

Q. Do you know whether you instructed them to drop it or [72] whether they did it of their own volition? A. I think we instructed them to.

Q. All right. Now, which wire was it that you used to assist them into Drake's Bay?

A. Our spare wire.

Q. The spare wire? A. Yes, sir.

Q. And you say that got mixed up on your drum some way? A. Yes, it did.

Q. In any event you got into Drake's Bay?

A. Yes, sir.

Q. And the Sea Prince was there. Now, as I understand it, the Sea Prince transferred its wire to the Sea Fox?

A. Yes, the Sea Prince made her wire fast to the chain of the ship in Drake's Bay and then she paid out all her wire and passed the bitter end to us.

Q. And in the meantime, what had you done with your second long wire which got mixed up on your drum?

A. We had to cut part of that to get the turns

(Testimony of James Ralph Reichel.)

out. Once you get a turn on the drum, it is almost impossible to pull it clear. They sort of form more. It is like a fishing reel. We had to take off part of it.

Q. In any event, your spare wire was no longer available to you? A. That is correct. [73]

Q. Now, how long was the wire which was transferred to you from the *Sea Prince*?

A. I believe it was a 1,200-foot wire, too.

Q. What dimensions? A. $1\frac{3}{4}$.

Q. Was it a new wire?

A. It was new wire.

Q. When you proceeded north from Drake's Bay, how much chain was being used and how much wire was being used as you proceeded on your voyage?

A. Well, I believe the ship had three shots of chain.

Q. As you had when you started out from San Francisco?

A. Yes, I believe so. I do not know absolutely sure, because I wasn't on the ship, but we were using approximately 1,000 feet of wire again.

Q. Would a wire of substantially less than that length have been suitable for towing?

A. Well, it could be used, but we have found through experience that approximately 1,000 feet, or leaving $2\frac{1}{2}$ turns on the drum, that length of wire was best.

Q. So your 600-foot—by the way, what was your 600-foot wire? Was it also $1\frac{3}{4}$ -inch?

(Testimony of James Ralph Reichel.)

A. Yes, sir.

Q. That was a used wire?

A. It was a used wire, but a good wire. [74]

Q. But it was too short a length to have served satisfactorily for the tow, wasn't it?

A. It could be used in an emergency. It was just an emergency wire.

The Court: Did you say it was $3\frac{3}{4}$?

The Witness: No, an inch and three-quarters.

The Court: What were the dimensions of the new cable?

The Witness: Same size, sir; $1\frac{3}{4}$.

The Court: And the one you lost?

The Witness: $1\frac{3}{4}$.

Mr. McKeon: That is diameter, your Honor.

The Court: I understand.

Q. (By Mr. Morse): And for the Court's information, when we talk of a manila hawser, then they talk about the circumference, twelve-inch hawser.

Did you communicate with the owners when you broke your wire north of Drake's Bay?

A. Yes, we did.

Q. You have a radio?

A. Radio-telephone, sir.

Q. So it is just like telephoning from this office down to some other building?

A. That is right, sir.

Q. Do you keep a log on your radio conversations?

A. No, we do not. [75]

(Testimony of James Ralph Reichel.)

Q. You did advise your owners that the wire had broken and as a result the Sea Prince was sent out? A. Yes, sir.

Q. Now, as I also recall, the next time you experienced any weather was commencing about November 11? A. Yes, sir.

Q. Now, referring now to Respondent's Exhibit A, will you please read into the record the weather as reported by your tug commencing, say——

The Court: On what day?

Mr. Morse: Commencing, say, 12:00 noon on November 11 right through until you got up into Everett, Washington?

A. Well, this would be from the 8:00 to 12:00 watch, which is written at noontime, written after the watch is over.

The Court: On what date?

The Witness: November 11.

The Court: All right.

The Witness: It is: "Clear, strong northwesterly wind, big sea, moderate swell, tug rolling and pitching." And for the 12:00 to 4:00 watch: "Partly cloudy, heavy northwesterly sea and swell, strong northwesterly wind, force 5. Tug rolling and pitching. Tow shearing from port to starboard."

4:00 to 8:00 watch: "Cloudy, fresh to strong northwesterly breeze, rough sea and heavy northwesterly swell. Tug pitching and rolling heavily. Tow shearing from side to side. No [76] headway."

8:00 to 12:00: This will be the nighttime: "Clear,

(Testimony of James Ralph Reichel.)

strong northwesterly wind, heavy sea and swell, tug and ship pitching badly, going astern from 8:00 p.m. to 10:00 p.m. 240 revolutions."

Have the 12th, sir?

Q. Yes. A. Friday, November 12——

Q. May I interrupt? You may be able to speed this thing along, and I assume the Court will ask for briefs. We would like to submit written briefs in the matter. We can refer to this log and refer to the weather conditions and save a little time, perhaps, unless the Court wants to know at this time what the weather was.

The Court: Well, maybe he can pick out the weather briefly and go right through so that there will be no question.

Mr. McKeon: Just confine it to the weather.

The Witness: Going as far as 12:00 to 4:00——

Q. (By Mr. Morse): This is on the 12th?

A. 12th. "Partly cloudy, heavy northwesterly sea and swell, northwest wind, force 5."

4:00 to 8:00: "Moderate northwesterly breeze, moderate sea and heavy swell."

8:00 to 12:00: "Moderate northwesterly breeze, moderate sea and swell." [77]

12:00 to 4:00: "Small northwesterly sea and swell, wind northwesterly, force 2."

4:00 to 8:00: "Gentle northwesterly breeze, gentle sea and low swell."

8:00 to 12:00 was: "Southeast wind picking up, moderate sea and swell."

(Testimony of James Ralph Reichel.)

The Court: That was the 14th?

The Witness: That was the 12th, sir. This will be the 13th.

The Court: Go right on.

The Witness: 4:00 to 8:00 watch: "Gentle north-easterly breeze, small sea and low swell."

8:00 to 12:00: "Northeast breeze, small sea and swell."

12:00 to 4:00: "Light northeasterly wind, small sea and swell."

4:00 to 8:00 was: "Gentle southeasterly breeze, small sea and swell."

8:00 to 12:00: "Strong southeast wind, big sea and swell."

The 14th. There is a lot in here about the towing board going over the side.

Q. Just give us the weather.

A. OK. I don't see much about the weather, all about the——

The Court: Anything at all on the 14th?

A. Well, wind moderate to fresh, southeasterly gale, heavy seas and large swell. [78]

The Court: The 15th?

The Witness: The 15th, commencing at 12:00 to 4:00: "Moderate southwesterly breeze, moderately rough sea and heavy swell." That is the morning. The afternoon it gets down to 12:00 to 4:00: "Moderate south-southwesterly breeze, rough sea and heavy swell."

9:00 p.m.: "Wind increasing in force to south-

(Testimony of James Ralph Reichel.)

easterly, whole gale. Tremendous seas and heavy swells."

The 16th: "Very heavy seas and swell. Blowing southeasterly, force 8."

9:00 p.m. I have down: "Southwesterly force 5."

17th: "Southwesterly 3," and at 8:00 a.m., "Gentle to moderate southwesterly breeze, moderate sea and moderate heavy swell."

That night, 8:00 to 12:00, we have down: "Light southwesterly sea and swell."

4:00 to 8:00 we have down: "Gentle westerly breeze, small sea and swell."

18th: "Overcast, wind westerly, force 3, and moderate westerly sea and swell."

8:00 to 12:00: "Southeast wind, light sea and swell."

12:00 to 4:00: "Moderate southeasterly sea and swell, wind southeasterly, force 3 to 4."

The Court: What do you mean, 3 to 4?

The Witness: Force 3 to 4, sir. [79]

The Court: What is that?

The Witness: Estimated between force 3 and force 4.

The Court: What does that mean?

Mr. Morse: On the Beaufort scale.

The Witness: On the Beaufort scale a force 3 would be 25 miles an hour, I estimate.

The Court: All right.

The Witness: "Southeasterly 5, rough sea and heavy following swell."

(Testimony of James Ralph Reichel.)

Friday, the 19th, at the time of passing Tatoosh, was east, southeasterly wind, force 2, calm sea.

The Court: The storm is over?

The Witness: The storm is over and——

The Court: Proceed.

The Witness: Into port.

The Court: Proceed.

Q. (By Mr. Morse): You were talking about wind forces, and that is on the Beaufort scale?

A. Yes, sir.

Q. Do you recall what the wind forces are on the Beaufort scale?

A. No, I didn't memorize them, sir.

Q. Now, when you speak of wave conditions, have you in your log noted the scale numbers of the wave conditions?

A. No, we don't do that.

Q. You say whether it is a heavy swell or heavy sea or [80] something?

Mr. McKeon: That is not a merchant marine custom.

Q. (By Mr. Morse): When your towing engine broke down on the 14th, where was the Sea Fox at that time?

A. The 14th, the 14th, the day we lost the tow?

Q. No, the 16th, early morning, when you lost the tow. The 14th your towing engine broke down.

A. Oh, the 14th, the towing engine, that is right, the first time the clutch carried away.

Q. Yes, sir.

A. Where were we at that time?

Q. Yes, sir.

A. Proceeding up the coast.

(Testimony of James Ralph Reichel.)

Q. Yes, I know—— A. We were——

Q. Will your log indicate your position?

A. Yes, it would.

Mr. McKeon: 14th, I think, Captain.

A. Yes, trying to find out where we are on here, but it was somewheres near Tillamook Light and south of the Columbia River bar.

Q. Approximately how far?

A. I just, making a guess, I would say 50 miles.

Q. That is close enough for this purpose.

When your towing engine broke down, did you communicate with [81] your owners?

A. No, we communicated with the Coast Guard. Yes, we also communicated with our owners.

Q. And you told the Coast Guard that you had broken down and you needed assistance?

A. That is right.

Q. Your tow engine broke, and what did you tell your owners?

A. Told them the same thing. We contacted the Neptune by ship-to-ship radio.

Q. Yes. A. To——

Q. All right, did you attempt to contact any other tugs to come to your assistance?

A. No, sir.

Q. Did you make any headway during the 14th?

A. I think the 14th—yes, the 14th we did move offshore.

Q. About how far offshore were you, by the way?

(Testimony of James Ralph Reichel.)

A. I think that when the Balsam first arrived upon the scene we were approximately twenty miles offshore, and then worked her out to thirty miles, approximately, offshore.

Q. Were you able to see land at 20 miles?

A. See the Tillamook lighthouse.

Q. Talking about towing engines, now, is that winch that you used, this towing winch, did it automatically pay out and take in line? [82]

A. No, sir.

Q. As the pressure increased?

A. No, sir, it did not.

Q. It was not a type winch of that character?

A. No, sir.

Q. So that if you wanted to pay out line or take in additional line, you had to do it manually—by manual—control it manually?

A. Yes, release the pneumatic brake for a second.

Q. What is your practice as you were towing up the coast—to let out a few feet of line every—once a day or six times a day?

A. Yes, once a watch usually we pay out, maybe slack out a few feet.

Q. Was that done regularly?

A. Yes, sir, that was done.

The Court: Why did you do that?

The Witness: We do that any time there is no towing board on the wire so that the same spot won't be constantly hitting the stern of the boat.

(Testimony of James Ralph Reichel.)

The Court: I understand.

Mr. McKeon: You wouldn't have to do it if your towing board was in position?

The Witness: No, because your towing board would——

Q. (By Mr. Morse): When was it you lost your tow board?

A. Let's see. Sunday, November 14, at [83] 7 a.m.

Q. Did you use a preventer wire at any time?

A. We did use a preventer wire.

Q. A single wire or two preventer wires?

A. No; used a single preventer wire, which was made fast to the base of the towing winch and clamped onto the tow wire.

Q. On the afternoon of the 14th when your towing winch broke down, you had a preventer wire in use at that time? A. Yes, we did.

Q. Did the preventer wire carry away at that time?

A. No, the preventer wire didn't carry away, but the force of the pull of the wire through it, those clamps wouldn't hold it, tended to slow it down, is about all.

Q. Now, what happened on the winch itself when it broke?

A. The teeth in the clutch were torn off.

Q. Was that all the teeth around the entire drum?

A. No, the teeth on the smaller one on the bottom.

(Testimony of James Ralph Reichel.)

Q. Smaller gear on the bottom?

A. Yes, sir.

Q. And when that happened did the drum revolve freely?

A. Well, no, the hand brake was still on.

Q. Is the hand brake alone sufficient to prevent the drum from turning?

A. Well, under ordinary circumstances a hand brake would hold. I mean, it is designed for that purpose, to hold, but under this circumstance it didn't hold, the strain was more [84] than the brake could hold.

The Court: What about the teeth——

The Witness: They connected with the clutch and the clutch has a pneumatic brake on it, the pneumatic brake plus the hand brake holds the drum in position.

The Court: Operate the drum with the hand brake?

The Witness: The hand brake just releases the pressure so it will pay out.

The Court: All right.

Q. (By Mr. Morse): After the teeth were sheared off, did you pay out any line? Were you able for the next few days to pay out any line?

A. Just when it went out beyond our control. We had it jammed in with a piece of metal to hold the drum.

Q. Then, as I understand it, you had that piece of metal jammed in there so it was impossible for it to pay out?

A. Yes, that was the—yes.

(Testimony of James Ralph Reichel.)

Q. So as a matter of fact, then until that piece of metal bent or was carried away that you had jammed in there—— A. Yes.

Q. ——no line was paid out? A. No.

Q. And your hand brake alone was insufficient to—your hand brake alone plus your preventer was insufficient to prevent the line from running [85] out? A. It was at that time, yes, sir.

Q. Were you able to determine how much that line did pay out from the time your teeth on the gears were stripped?

A. I would say all in all we lost about half a lear.

Q. That would be approximately how much?

A. I guess that would be about eight feet per turn, 75 feet.

Q. 75?

A. 75 feet. That is just an estimate. I would have to measure to find out.

Q. I assume that you contacted the Coast Guard and the Neptune immediately upon your teeth being stripped? A. We did.

Q. And the Balsam?

Mr. McKeon: May I interrupt there? I don't want to have any misunderstanding. My understanding is that he did endeavor to communicate with the Neptune, but had some trouble in picking her up. He went immediately to get the message out.

The Witness: Yes.

(Testimony of James Ralph Reichel.)

Q. (By Mr. Morse): How long after the Coast Guard was contacted did the Balsam arrive?

A. I would have to check on the date of that, sir. I would just estimate four or five hours. I can get the exact time, probably.

Q. While we are at it, get the exact time. I think it was a little bit less than that. [86]

A. At 4:20 we contacted the Coast Guard and at 9:45 she arrived. Of course our times were probably, were daylight saving time, I notice on the log daylight saving time, until such time as the Hercules got ahold, then we changed to Pacific time again.

Q. If you had wanted to do so, could you have paid out line subsequent to the time when the teeth were stripped if you wanted to do so?

A. After the teeth were stripped?

Q. Yes, sir.

A. Not after we jammed the winch.

Q. Did you at any of the time have occasion to take the line in while you had the Herald in tow?

A. During the whole voyage?

Q. Yes.

A. Oh, yes, there was times we probably would have hove in a little bit, maybe, I don't recall if we hove in any.

Q. After your teeth were stripped, did you secure it up again on the preventer wire, I assume?

A. Yes, we took — kept taking up on those clamps all along as we went along.

Q. Didn't put on additional preventer wires?

(Testimony of James Ralph Reichel.)

A. No, put on, had about four or five clamps on the same wire, clamped to the wire.

Q. Was the preventer wire of the same diameter as your towing [87] wire? A. Yes, sir, it was.

Q. Do you keep a notation in your logs of the times when you would slack out on your wire?

A. No, we don't.

Q. I understood you to say you did that regularly and every watch?

A. That is—yes, we do when there is no towing board on.

Q. In other words, you don't do it when you have a towing board? A. No, sir.

Q. And you had a towing board continuously up until the morning of the 14th?

A. I believe that was the time.

Q. Now, will you tell me again what height from the trough to the crest those waves were on the 16th when your wire broke?

A. Well, it is an estimate, of course. My point would be looking out from the—from the towboat, but it seems to me that the top of the crest to the trough would be as much as 30 to 40 feet.

Q. And you mentioned, when you were mentioning the size of the waves, you said you were unable to see the Neptune?

A. Yes, I just used that as a figure of speech to show that she would be down in one trough, we would be down in the other [88] trough, a wave in between us, and we could not see her mast.

(Testimony of James Ralph Reichel.)

Q. How far away was she at the time when you were unable to see her mast?

A. A couple of hundred yards.

Q. In other words, you were in a valley and she was also, was in the bottom of another valley?

A. Yes, at that time.

Q. So that you were looking at an angle?

A. Yes, sir.

Q. And unable to see her mast?

A. That is right.

Q. In your line of vision. What length is the Sea Fox? A. I don't know exactly.

Q. Approximately.

A. I would say approximately a hundred and forty feet.

Q. She is a big sea-going tug? A. Yes.

Q. 1200 horsepower?

A. 1200 horsepower.

Q. And the Neptune, was she about the same size or bigger?

A. I believe she is larger.

Q. Is it a fair statement to say that the Sea Fox is a big sea-going tug? A. Yes.

Q. Do you know whether there was any sea-going tugs available [89] in the Columbia River on or after the 14th when you were beginning to have troubles? A. I do not know, sir.

Q. Did you inquire if there were by radio?

A. No.

Q. When was it that you asked the Hercules to

(Testimony of James Ralph Reichel.)

come down? Was that after the Herald was anchored or before?

A. Well, we didn't directly ask the Hercules to come down ourselves; we never did get in contact with them until they were at sea.

Q. You were advised by your owners that she was en route? A. Yes.

Q. Do you know what companies operate sea-going tugs out of the Puget Sound area?

A. I know of two companies that operate sea-going tugs out of there.

Q. One is the Puget Sound Tug & Barge?

A. Puget Sound Tug & Barge, and the other one is——

Q. Foss? A. Foss.

Q. And Foss has quite a fleet of tugs?

A. Foss has the same type tug, too.

Q. They have big sea-going tugs?

A. Same thing, I think.

Q. Do you know whether or not they were requested to come and [90] assist you?

A. I do not know, sir.

Q. By the way, you are one of the libelants in this case, aren't you? You're seeking recovery for your own services in this case?

A. I don't know.

Mr. Morse: Mr. McKeon, he is a libelant?

Mr. McKeon: He is a libelant, yes. The libel is on behalf of the operators, owners and officers and the crew of each of the tugs.

The Witness: Oh.

(Testimony of James Ralph Reichel.)

Q. (By Mr. Morse): Does your log indicate your position with reference to North Head? I think it is at the entrance of the Columbia River, when your towing wire broke on the early morning of the 16th.

Mr. McKeon: The position?

Mr. Morse: Present position——

Mr. McKeon: Early in the morning of the 16th?

The Witness: Early morning of the 16th, no, we have no position down there.

Q. What was your last noted position?

A. Last noted position before that—well, noon position the day before is down.

Q. And where were you at that time?

A. Well, we estimated 45-57 north, 124-25 [91] west.

Q. And approximately with reference to the entrance of the Columbia River, would you be, off the west or south and west or south?

A. South and west.

Q. About how many miles, 25 miles?

A. I would have to look on the chart. I don't recall.

Q. We can compute that.

Mr. McKeon: What is it directly, 25, 30 miles?

The Witness: No, I believe it is further than that. I would say it must be about 50 or 60 miles. That was when the Balsam came out. Is that when you are talking about? I wanted to make sure.

Q. (By Mr. Morse): Were you able to approxi-

(Testimony of James Ralph Reichel.)

mate the speed that the Herald of the Morning was drifting when she was free?

A. No, sir, I was not.

Q. But her drift, as I recall, was northerly and in toward the coast? A. Yes, sir.

Q. Were you able, can you characterize the angle of approach?

A. Well, no, sir, but I do have the position down here, where the Neptune was struck, and also the position where the ship was finally anchored. By that I could lay out the course.

Q. All right, will you give us the position where the vessels were when the Neptune was struck?

A. As this position I have for the Neptune was an estimated [92] position, was 46-20 north, 125-20 west.

Q. Was that on bearing? A. No, sir.

Q. Just an estimate?

A. That was my estimated position.

Q. And what was the position when the Herald was at anchor?

A. Position there, 46-42 north, 124-26 west?

Q. How far offshore was that, approximately?

A. I don't recall. You could see lights on the beach.

Q. Ten miles?

A. No, I think it was less than that.

Q. Five miles, say?

A. I hate to say a figure, I don't know for sure. I can say——

(Testimony of James Ralph Reichel.)

Q. I don't want you to estimate because——

A. I could lay it on a chart and tell you in a few minutes.

Q. It is available from other information on the depth of the water, and so forth. Well, after the Herald had broken adrift from you on the morning of the 16th while it was still dark, did you come up to speak to the Herald?

A. I think that was the next day, wasn't it?

Q. Bearing in mind she broke adrift just a few minutes after midnight of the 16th.

A. That is right. Yes, well, after we stood by the Neptune we proceeded to——

Q. While it was still dark, before the Neptune was damaged, [93] while it was still dark, did you come up to the Herald and speak to her?

A. No.

Q. You didn't attempt to pass the line to her at all during the night?

A. Not at that time, no.

Q. During the day of the 16th, did you attempt to pass a line to her?

A. The day being 24 hours, we did that evening.

Q. The evening of the 16th? A. Yes.

Q. This was after the sinking of the Neptune?

A. Yes, we attempted to shoot a line aboard her that evening.

Q. Well, as I recall, you said that the wind was such that your shot missed the Herald of the Morning?

(Testimony of James Ralph Reichel.)

A. Well, the shot went off in the dark and we thought it had hit the ship, but they didn't seem to find it, so I guess it didn't.

Q. In any event——

A. In any event, we didn't make contact.

Q. And what line would you have passed to the *Herald*?

A. We would have passed our short piece of wire just as an added preventive.

Q. Yes. Were you on the weather side or the lee side of the *Herald* when you fired your [94] shot?

A. She was laying pretty near up into the wind during that time, laying at her anchor, so we were on her starboard side, so there wasn't anything much of a lee either side.

Q. This time, then, when you say you attempted to shoot a line over was after the *Herald* was at anchor?

A. That is correct, sir.

Q. As I understood you, she was headed into the wind?

A. More or less.

Q. She would ride normally, the tendency would be for her to, for her bow to head into the wind?

A. A ship at anchor like that, she would, of course, swing around a good deal, but her overall tendencies would be to head into the wind.

Q. Did you see the *Neptune* when she came up to the *Herald* while it was still dark? I think it was the——

Mr. McKeon: Night of the 15th.

(Testimony of James Ralph Reichel.)

Q. (By Mr. Morse): Night of the—So I won't guess, I will look it up.

The Court: Remember when that was?

The Witness: Yes, it was the night of the 15th.

The Court: What time?

The Witness: She came up there—it was approximately 9:00, 10:00 o'clock at night.

Q. (By Mr. Morse): She arrived about 10:00 o'clock p.m. on November 15? [95] A. Yes.

Q. While it was still dark, did she attempt to put a line to the Herald?

A. Well, we could see her working down there, had real bright work lights on her afterdeck and we could see her working.

Q. How far distant were you from the scene?

A. Well, the length of our hawser.

Mr. McKeon: At that time he had a hawser to the vessel.

Mr. Morse: Oh, yes, of course, of course.

Q. Was she on the weather side or the lee side at that time?

A. I believe he came up on the lee side.

Q. In any event, he was unsuccessful in getting a line to the Herald? A. Yes.

Q. On the night of the 15th was this just one of the occasions two occasions, while it was still dark?

A. He came up to the ship and drifted clear, or have to work himself clear, and come back again.

Q. Well, on the morning of the 16th, after you had broken free, the Neptune again came up to the

(Testimony of James Ralph Reichel.)

Herald and in the process of getting a line aboard was when she was in the collision? A. Yes.

Q. And as I recall, you said you were on the port quarter? A. That is right, sir.

Q. Now, for the Court's instruction, I think the port quarter [96] would be the lefthand side and looking off abaft the beam would be amidships, the port quarter would be halfway amidships toward the stern of the vessel? Is that right?

A. That is correct, sir.

Q. In other words, three-quarters of the way from the bow toward the stern. About how far distant were you at that time?

A. Well, we were different distances; we would work up and fall back, I would say, go as much as a half a mile away up to, oh, a quarter of a mile.

Q. And the time elapsed while the Neptune was up at the bow, was somewhat in the neighborhood of an hour?

A. I would say it was approximately, sir. We didn't keep a record of what they were doing, but it seemed about an hour.

Q. Was the Neptune staying on the weather side of the bow most of the time?

A. Yes, he was working up to the ship, as the ship was drifting down, he was working in on this angle, the ship laying over, so he worked into it this way (indicating).

Q. He was working from it—put it this way: The ship was lying broadside to the wind, was she?

(Testimony of James Ralph Reichel.)

A. Yes, sir.

Q. And which direction?

Mr. McKeon: She wasn't lying, she was drifting, drifting as distinguished from lying. [97]

Mr. Morse: I didn't suggest that she was lying dead.

The Court: You describe the conditions at that time.

The Witness: She was drifting along with the wind, but laying there drifting along and this other boat came up and would follow along with the ship.

The Court: What boat is that?

The Witness: That is the Neptune, attempted to pass the wire.

Q. (By Mr. Morse): Could you see whether she was forward of the bow of the Herald?

A. We couldn't actually tell where she was, ahead of the bow or not, but right around the bow of the vessel.

Q. And were you on the weather side during this time that you were observing?

A. We were.

Q. So that the Neptune also must have been on the weather side most of the time, otherwise you wouldn't have seen her?

A. Yes.

The Court: Take a recess.

(Short recess.)

Q. (By Mr. Morse): Was it your practice, as

(Testimony of James Ralph Reichel.)

you were proceeding up the coast, to fix your position on shore points? A. Yes.

Q. Did you make notations in your logs of these fixes? A. Yes, in passing abeam. [98]

Q. Commencing on the 14th, can you tell us which, if any, of the positions were fixed on shore points?

A. Well, looking back upon it now, I don't recall. I think that many of them were noon positions put down. We take the latest noon position and estimate our position where we were at noon.

Q. All right. Your noon positions, those were sightings on the sun, were they?

A. Oh, at times we took sights, but not very often.

Q. And how did you fix your noon position?

A. Well, we usually, say we got a point abeam on the morning, and estimate, make a notation and mark it on the chart, dead reckoning for your position.

Q. Can you—all right, then. Were you able to see shore points at any time on the 14th?

A. 14th?

Q. That was the day that you had trouble, first had trouble with your winch.

A. Yes, as I recall, we saw Tillamook Light at that time.

Q. So that was an accurate fix?

A. Yes. We do that by taking bearings; it is rather difficult to take a bearing on a towboat,

(Testimony of James Ralph Reichel.)

pitching that hard, so you might not come out exact.

Q. All I am endeavoring to establish here is whether these several positions that you were in that you had given us at the [99] time when the Neptune sank and the time when the—was it a fix on a shore position?

A. No, that was an estimate.

Q. That was an estimate?

A. That was an estimate. I estimated it during the day, perceiving which way you drift with the wind and weather, and tried to figure out approximately where we were from that.

Q. And the position when the Herald of the Morning was at anchor, that was an estimate, or fixed on shore structures?

A. I don't recall at the present time, but I do believe we took bearings of both points at that time.

Q. Now, I noticed at one point in a log you made a reference the wind was southeast 8. A southeast wind would tend to blow you offshore, wouldn't it?

A. Southeast? Yes, sir.

Q. And I assume that the wind was variable at times, blow east and southeast, and others blow from east or southwest?

A. Yes, the wind would vary considerably.

Q. Did you observe the Coast Guard Balsam when she put her ten inch line to the Herald of the Morning?

A. No, were nowhere in the vicinity at that time.

(Testimony of James Ralph Reichel.)

Q. At that time you were in the vicinity of the Neptune?

A. I believe we were standing by the Neptune. I don't know what time she tried that. We didn't leave the Neptune——

Mr. McKeon: Either there or on the way back to the [100] Herald.

Q. (By Mr. Morse): It was on November 16 at 1630 hours, which would be 4:30 p.m.

A. That would be 4:30 standard time, wouldn't it?

Q. No, this was daylight saving time.

A. Daylight saving time—well, the Neptune sank at 5:23 p.m. and we stood by the Neptune until that time.

Q. From the time the Neptune was holed until she sank, she had headed inshore as close as she could operate?

A. Well, she was maneuvering, first trying to get hold of that collision mat that the Coast Guard cutter was attempting to pass to her.

Q. Approximately how far from the point of collision did she navigate or maneuver until she sank, would you say?

A. Well, most of it was in a circular direction, going around and around.

Q. So that it was in the same approximate position? A. Approximately, yes.

Q. And from the time she sank until—from the time she was in collision until she sank, how many hours elapsed?

(Testimony of James Ralph Reichel.)

A. Let's see. The collision was, got it down at 10:15 a.m. Neptune was holed and she sank at 5:23 p.m., holed at 10:15.

Q. That is approximately seven hours.

A. About seven hours.

Q. In that period of time how far would the—as I understand [101] you to say, the Herald of the Morning was almost in your horizon at the time the Neptune was sunk, over the horizon?

A. She was outside by that time. While they were removing the crew of the Neptune, I happened to look up one time and I noticed that the Herald of the Morning was quite a great distance away.

Q. What would your horizon distance have been, or the distance to the horizon, have been, approximately?

A. Well, for an object that high, of course a ship being above the horizon, I would say you could see her for seven or eight miles.

Q. So she had, during the seven hour period, she drifted at least seven or eight miles?

A. Yes, because she was outside at the time.

Q. And was she drifting towards shore or parallel to the coast or could you tell?

A. Well, I didn't think at that time exactly which way she was drifting.

Q. Now, we get down to the time when the Herald was anchored on the—she dropped her anchor before midnight of the 16th, as I recall.

A. Yes.

(Testimony of James Ralph Reichel.)

Q. And she rode at anchor all day the 17th?

A. Yes.

Q. And during the day of the 17th the Coast Guard Winona passed [102] a twelve-inch line to the Herald of the Morning and subsequently transferred the bitter end to the Sea Fox?

A. Yes, sir.

Q. Now, when the Hercules came to the vicinity during that night, in other words, the——

A. Night of the 17th, 18th——

Q. The night of the 17th, 18th?

A. Yes.

Q. Do you know whether she attempted to pass a line to the Herald during—while it was still dark?

A. I don't know, seemed to be pretty close to her. I think she spoke to the ship, she was that close.

Q. But as far as you observed, she didn't attempt to pass a line?

A. She didn't have a line out when she came out from there.

Q. Now, coming now to the daylight hours of the 17th, the Hercules did pass a line?

A. Yes, she passed her wire up.

Q. How was the Herald of the Morning lying? Was she generally—was she lying with the bow into the wind most of the time?

A. Yes, she was more or less lying into the wind.

(Testimony of James Ralph Reichel.)

Q. She didn't lie, she didn't have a tendency to lie broadside to the wind?

A. No, because she was held at one end there.

Q. Now, when the Hercules was attempting to pass a line aboard, [103] how much—strike that. What position were you endeavoring to maintain in order to minimize the hazard to your twelve inch line and also minimize the hazard to the Hercules?

A. We were trying to lay as much clear as possible ahead and of course to one side, to leave him one side more clear than the other.

Mr. McKeon: What is that question?

(Question read.)

Q. (By Mr. Morse): I assume that the maximum degree of safety would have been for you to be off at 90 degrees from the line of the fore and aft line of the Hercules; that would be the maximum degree of safety in so far as the Hercules' position was concerned?

A. Yes, in some ways it might be and some ways it might not be. If he—there is really nowheres he can get entirely clear because of the fact the line is still there, but if we get off to one side the ship is anchored way over here, it does make more room for them to work around here (indicating).

Q. You were able to keep off to one side all the time?

A. Yes.

Q. And it is a fact that the Hercules did not come in contact with your line?

A. No, she didn't.

(Testimony of James Ralph Reichel.)

Q. And she didn't come in contact with the Herald of the Morning? [104]

A. I don't believe she did.

Q. Now, you mentioned that after the Hercules had gotten her line to the Herald——

A. Yes, sir.

Q. ——and had proceeded on out, I assume she had then pretty close to 1,000 feet of wire between herself and the Hercules?

A. Paid out some amount of wire; she had a line out.

Q. How much line did you have out?

A. We had a line passed up by the Winona and I think it was approximately 1,000 feet long.

Q. Then you would have had perhaps 900 to 1,000 feet of—— A. Yes.

Q. ——of Manila line. You mentioned before the anchor was released overboard you and the Hercules were in irons? A. Yes, sir.

Q. Did you, in fact, ever come in collision?

A. No, we never did.

Q. And didn't come in collision at any time?

A. No, sir, we never did touch.

Q. Can you compute the relative strength——strike that. Do you know the relative strength of a wire cable? A. Yes.

Q. ——compared with the comparable size Manila line?

A. I would have to look that up in the seaman-ship book, sir; those are figures that I don't tow around in my head. [105]

(Testimony of James Ralph Reichel.)

Q. If you don't know—I am not trying to trip you up, I have looked it up, and I think, if I understand it, a Manila line has about one-sixth of the strength that a wire has, each having the same diameter. Does that sound approximately right to you?

A. If you looked it up, it does sound right, yes, sir.

Q. After all, the books are more accurate than I am.

A. Yes.

Q. So I am not trying to pin you down. It wasn't nearly as dangerous for the Hercules to attempt to get a line aboard as it had been for the Neptune, was it?

A. Oh, no, because the weather had moderated at that time.

Q. Moderated, and the Herald of the Morning was anchored?

A. Well, being anchored wouldn't assist them, I don't think, in putting up a wire.

Q. Well, didn't it make it less hazardous to maneuver because the Herald of the Morning wouldn't have been shifting around as much?

A. No, but she was, be still pitching at her anchor, still is a dangerous job.

Q. In any of your towing jobs, have you ever used a towing wire of a diameter in excess of $1\frac{3}{4}$ inches?

A. Yes, I have.

Q. Towing cargo vessels of this comparable size?

A. Not when towing vessels of this kind. It was

(Testimony of James Ralph Reichel.)

oil barges, [106] with a different type of boat than this.

Q. What size towing wires have you used?

A. Two inches has been the maximum we have used.

Q. Did you actually take any water inside the Sea Fox? In other words, were your bilge soundings increased while you were, at any time subsequent to November the 14th?

A. After the 14th, sir?

Q. Commencing with the 14th.

A. Well, yes, we took water into the boat, the rooms were—had water in them. The weather and seas would break aboard and come inside of us.

Q. Would that amount to any substantial quantity of water?

A. You mean to fill up the boat?

Q. Was it hazardous to the vessel?

A. By the amount of water?

Q. Yes. A. No.

Q. What free board do you have, by the way?

A. From the pencil mark to the deckline, I should say about two feet.

Q. So that the stern end of your tug is just about so far above the level of the water, isn't it?

A. Yes, about four or five feet.

Q. Well, all right, four or five feet, and it wouldn't take a tremendous sea to have green water on your stern? [107]

A. It will with the tow, sir, because towboats

(Testimony of James Ralph Reichel.)

are so built, the design of the vessel is such that they rise with the seas. If you had a ship that only had the same amount of freeboard that——

Q. It will tend to act like a cork?

A. Yes, sir.

Q. When the stern is held down by the heavy weight of the line to your tow, the stern isn't able to move up and down as readily, is it?

A. Well, maybe not as readily, but it will rise right up.

Q. Have you ever been in your tug at sea when you have taken green water aboard other than this occasion?

A. At times, yes, sir.

Q. It isn't an extraordinary situation, is it?

A. No, but it is—it isn't a situation we like too much.

Q. Yes, I appreciate that. Would you say that the Balsam and the Winona could have handled the situation without the assistance of the Hercules?

A. Well, you mean, could they have towed the vessel?

Q. Yes.

A. I assume they could tow; I assume they could, yes.

Q. They are big powerful vessels, equipped with——

A. Well, I don't know.

Q. ——towing winches?

A. I don't know if they have towing machines or not, never been [108] aboard, but I assume, the Coast Guard does rescue work, they must have been set up to do it.

(Testimony of James Ralph Reichel.)

Mr. McKeon: You don't know?

The Witness: I have never been aboard. I don't know if they have any towing machines.

Q. Do they have to have a towing machine, or couldn't bitts be used?

A. Well, bitts can be used in an emergency if nothing else is available; they can use bitts, but they are not nearly as good to tow on as a towing machine.

Q. Talking about a towing machine, actually the only purpose of your winch was for the purpose of letting out line, as you indicated?

A. Well, letting out and heaving in.

Q. Other than the times you wanted to do so, probably, and having to do so by manually operated controls, your winch was stationary?

A. That is correct.

Q. Yours wasn't a type of winch which automatically let in and let out as the strain increased or decreased?

A. No, it was not.

Q. Have you been on sea-going tugs having such an automatic winch?

A. Yes, I have.

Mr. Morse: No further questions. [109]

Redirect Examination

By Mr. McKeon:

Q. Captain, I have just a few questions.

The Court: What?

Mr. McKeon: Just a few questions.

The Court: Make it a few. Proceed.

(Testimony of James Ralph Reichel.)

Q. (By Mr. McKeon): When you talk about the steel hawser being 1,200 feet, do you know actually whether it is 1,200 or more?

A. No, I have never measured one. I just think it is approximately 1,200 feet long.

Q. You have been up and down this coast as an officer of ships on tugboats many times?

A. Yes, I have.

Q. In all seasons? A. Yes, I have.

Q. Did you ever experience any worse weather and seas than you did on this particular voyage, the 15th and 16th?

A. No, this is the roughest I have seen on this coast. It is very clear in my memory for that reason, so——

Mr. McKeon: That is all.

The Court: Step down.

Mr. Morse: May I ask just one more?

Recross-Examination

By Mr. Morse:

Q. Speaking of the weather, you did overhear—put it the other way around—normally you do listen in to [110] weather broadcasts, don't you?

A. Yes, we do.

Q. When you are at sea? A. Yes.

Q. And you did hear the weather broadcast when proceeding up the coast?

A. Yes, we did.

Q. And do you recall now whether the broadcasts advised of the approach of this storm?

(Testimony of James Ralph Reichel.)

A. Well, yes, but we knew there was storms like—you mean this last storm, the big storm we had?

. Q. The storm commencing—well, commencing the 13th of November.

A. Yes, we were advised it was coming.

Q. Did you communicate with the owners at that time when you were advised by the weather broadcast that the storm was imminent?

A. Well, we used to report our position every day by radio.

Q. Did you receive any instructions from your owners in respect to the imminency of this storm?

A. No, we handled those things on the boat ourselves.

Mr. Morse: No further questions.

Mr. McKeon: That is all.

The Court: Call your next witness.

Mr. McKeon: Captain Sprague.

This witness is from Seattle, your Honor, and I would like [111] to have him depart.

Mr. Morse: He may be excused, so far as I am concerned.

The Court: He may be excused.

KELLY SPRAGUE

called as a witness on behalf of the libelant; sworn.

The Clerk: Your full name, please.

A. Kelly Sprague.

The Court: What is your business or occupation? A. Tugboat captain.

The Court: How long have you been so engaged?

A. I have been nearly fifteen years.

Q. And were you on one of those tugboats at the time in question here?

A. Captain of the Neptune, sir.

Q. Of what? A. Of the Neptune.

Q. How long were you on that boat?

A. Approximately three months.

The Court: Proceed.

Direct Examination

By Mr. McKeon:

Q. During your fifteen years' towboat experience, Captain, have you frequently been on ocean towing? A. Yes, sir.

Q. And were you the master of the tug Neptune at the time of [112] her loss? A. Yes.

Q. Captain, I show you an amendment to the libel which sets forth the names of the personnel on the Neptune. Will you read that and tell us whether those are the men who were on the Neptune at the time of this service?

A. Those were the men.

Q. Yes. Now, to expedite this as much as we can, Captain, you got a message by radiotelephone

(Testimony of Kelly Sprague.)

from the Sea Fox telling you about some condition in which she was in, or telling you something about needing assistance? A. Yes, sir.

Q. And then that was on the 14th, was it not?

A. That's right.

Q. And then did you put out for the position that you understood the Sea Fox and the Herald were in?

A. Yes, we headed directly to that scene.

Q. That was, about what time did you start out, as you remember?

A. It was around 4:30 in the afternoon of the 14th.

Q. And what time did you get to the vicinity of the two vessels?

A. 9:00 p.m., the following evening.

Q. Describe the weather that you experienced en route?

A. We had a strong southeast wind, and heavy rolling sea.

Q. After your arrival, did you have an opportunity to size up [113] the situation?

A. Yes, sir, we proceeded slow around the Sea Fox and the Herald of the Morning.

Q. Did the Sea Fox have a hawser to the Herald of the Morning? A. He did.

Q. Well, now, if you will just tell the Court, Captain, in your own words, what you did from the time you arrived until the time that you and the Herald of the Morning came together and you received your mortal wound?

(Testimony of Kelly Sprague.)

A. Well, we were in continuous contact with the Sea Fox and also the Balsam by radiotelephone and the Sea Fox explained the situation that his tow——

Q. I want you to tell the Court what you did, not what somebody else told you.

A. That is what I was coming to. He was in danger of losing his hold of the tow because of the trouble he was having with his towing machine. So I decided that I would try to get a line aboard as soon as possible while he still had ahold of it so that the Herald wouldn't be adrift helpless.

So I had all the crew up on the Neptune and instructed the mate what gear we wanted to use and all the men turned to getting that gear ready, took them about an hour. The gear was all lashed, of course, and took them an hour to get that ready.

During this time, a very heavy sea was running and a strong wind, and the men were quite imperilled on the tug because [114] of the green seas breaking over the vessel and the decks and boards or rail were completely filled with water.

Mr. Morse: May I interrupt, Captain? Was this during daylight of the 16th?

The Witness: No, this was the night we arrived there.

Mr. Morse: I see.

The Court: That would be the night of what?

The Witness: The night of the 15th.

The Court: The 15th. All right.

(Testimony of Kelly Sprague.)

A. (Continuing): Well, we finally managed to get this gear ready and proceeded to the lee side of the Herald of the Morning and maneuvered the Neptune, stern of the Neptune close to the bow of the Herald of the Morning and the crew of the Herald of the Morning managed to get a small line down to us, a heaving line, and the crew were bending over this line tying it to the wire I intended to pass up to them, and had quite a difficulty in this heavy sea. The Herald of the Morning was yawing, and us, too, both going up and down. It was quite difficult to try to keep the tug close enough so they could heave this wire up by manpower, and managed to get fairly close, or close enough where I thought they could get it up, and these heavy seas were still breaking over the vessel and——

I was standing on the after controls. The tug has an after control on the boat deck and these seas were breaking over me, too, up there, and the men down below were practically on their [115] hands and knees hanging on trying to get this line up and she filled up so one time there so completely that the water shorted out some electrical wiring and all the lines—electric light on the tug went out. So all I could do was to maneuver the tug away from the Herald of the Morning and in a short while the engineer had the lights back on again, but I decided, because of the weather and the danger involved, to not take another chance that night, so——

(Testimony of Kelly Sprague.)

Q. Were there any lines floated to you that night, or an attempt to be floated?

A. No, we were on the lee side and they threw the cable line down to us.

Q. The floating didn't take place that night?

A. No, sir.

Q. You knocked off that attempt; then what did you do?

A. I just cruised around it slow, circled the Sea Fox and the Herald of the Morning, intending to do so until daylight, and about 1:00 o'clock in the morning the Sea Fox radioed to me that his towing line had parted and——

The Court: What time about was this?

The Witness: It was around 1:00 o'clock in the morning of the 16th.

The Court: 16th, all right. What occurred then?

The Witness: Well, the ship swung broadside to the wind and proceeded to drift, so all the remainder of the night I just [116] kept on with the Herald of the Morning trying to keep it in sight, waiting for daylight to try to make another pickup there. About 7:00 o'clock, why, again——

The Court: That would be on what date?

The Witness: The morning of the 16th.

The Court: All right.

The Witness (Continuing): We—the crew turned to getting the lines ready again to make another attempt and I proceeded up close enough to the Herald of the Morning to talk to the captain. I

(Testimony of Kelly Sprague.)

asked the captain of the Herald of the Morning if it was possible to, if he had any anchor chain that he could get down to us. We had power in the tug and I believed if he could pass a line down to us it would be the safest and easiest.

Q. (By Mr. McKeon): You knew that he didn't have power for his ship?

A. Yes, he was dead, and he informed me that he had nothing that he could send down to us. He had one anchor there, hanging there, and I thought possibly he could lower that anchor to the first connecting shackle and break that drift and pass up by means of a line at the end of this chain to us, so we could shackle our towline onto him and have a good hold of him. But he informed me, so far as the chain was concerned, he was all done. He had lost so much previously he had none left. So the only thing we could do was to get a wire from [117] us up to him.

So I maneuvered the Neptune to the downwind, or would be the lee side of the Herald of the Morning, and attempted to throw heaving lines. This was unsuccessful and I wasn't able to keep the Neptune close enough to the Herald of the Morning to get a line across. I couldn't take the chance of getting too close to the Herald of the Morning from this approach, because if the Herald of the Morning was brought—that is the effect of a ship in a strong wind—a vessel will go broadside, if my vessel was on the lee side, and I just didn't happen to judge it correctly, had to slow down enough to

(Testimony of Kelly Sprague.)

try to get close to the Herald of the Morning to get a line across, if I happened to approach like he was, I wouldn't have a chance of getting away from the lee side of the Herald of the Morning and he would be on top of us and——

Q. In other words, he would have drifted toward you? A. Yes.

Q. Drifted down on you?

A. This vessel is way out of the water and she is just a small tug, comparatively, and he would drift faster than we would and he would be down right on top of us and if that happened, why, we would all have lost our lives. So I proceeded around to the windward side of the Herald of the Morning and the crew of the Herald of the Morning fastened a small line by means of two liferings. [118]

Q. Two what?

A. Two liferings, cork liferings.

Q. Two life cork rings?

A. Yes, and they put this out through the bow and as the ship was drifting about three miles an hour. And they let that out far enough so that we could pick that up and still be clear of the ship and after two attempts to pick up these liferings, we did, and the crew bent this on to our pennant, an inch and a half wire pennant.

Q. That is, your crew did?

A. Yes, to send up to the ship. This they were able to do in spite of the going back and forth of the vessels and the difference of the rising and falling, and I hollered to the captain of the ship to

(Testimony of Kelly Sprague.)

have his men heave this line up, which they did. They managed to get it, the end of our wire up to the bow chock, or opening in the bow of the ship, but they were unable to get this end of the wire which had a thimble in it over the lip of the chock, and they struggled with the hawser for probably about an hour, I would say.

Q. This was the wire pennant you were speaking of? A. Attached to our heavy towing line.

Q. What was your towing line, $1\frac{3}{4}$?

A. Yes, sir.

Q. Steel?

A. Steel cable, and in this heavy sea the tug and the ship [119] were consequently short distances apart and it was necessary for us to pay out on this heavy towline, so they would have enough slack to get it up to the ship, and when I saw the difficulty they were having trying to get it through this chock, I attempted to keep the tug Neptune as close as I could to the ship so we could heave in as much of this heavy towline of ours to take as much weight off as possible to get this wire through the chock.

Q. In other words, the closer you got to the vessel, the less weight?

A. The less weight the men would have to pull this wire through.

The Court: Describe this chock.

The Witness: Now, it was just an opening, an eye.

The Court: An eye opening?

(Testimony of Kelly Sprague.)

The Witness: Yes, where the line ran through.

Q. (By Mr. McKeon): Up on top of the vessel?

A. It had a lip underneath it and the wire, the heavy wire hanging down, they were unable to get the heavy wire through this opening.

The Court: Go on.

The Witness: The ship is drifting and I kept kicking the tug slow ahead, kept it as close as I could to the bow of the Herald of the Morning while they attempted to pull this line through. [120]

Q. Would you use these models to help the Court and just describe your easing in and the way the ship was and the way your tug was?

A. This is the Herald of the Morning, the ship, and this is the tug Neptune, and I am laying up here, the ship is drifting that way (indicating).

Mr. Morse: You have them bow to bow, Captain.

The Witness: Yes, sir. And this line from here to here——

The Court: The shore would be here?

The Witness: The shore is in here, sir. This vessel drifted in toward the shore.

Mr. Morse: The shore is 15 to 20 miles distant.

The Court: Yes, I just wanted to get it located.

The Witness: Drifted in here about three miles and we were attempting to get this line from the stern of this tug up to here, and I am kicking this tug along with the ship trying to get as close as I can by taking the weight of this heavier wire, as much weight off so they can get it up in there.

(Testimony of Kelly Sprague.)

Q. (By Mr. McKeon): How long were you doing that, about, Captain?

A. I would say about an hour.

Q. About an hour.

A. Well, I was about 75 feet off——

The Court: 35?

The Witness: About 75 feet. [121]

The Court: 75.

The Witness: And a huge, unusually large sea picked us up bodily and threw us right into the bow of this ship. When I saw that the sea picked us up, I came full astern on our engines, trying to back her clear, but the sea was so large that my going full astern had no effect on the tug and we were just carried bodily right into the bow of the ship, and this particular time his bow was completely out of the water and this sharp edge of the bottom of the ship came down on us and cut a hole in us.

The Court: Where? •

The Witness: Right about here (indicating).

The Court: I see.

Q. (By Mr. McKeon): Have the effect of a knife chiseling right through?

A. Yes, sir. When it did, she bounced clear, they let this line go and she proceeded off here (indicating). I turned the controls, the wheel over to the mate, and I went down below with the first engineer to see what the damage was. We found a hole in the side about five feet. Water was rushing in and it punctured the fuel tank, too.

The Court: A fuel tank?

(Testimony of Kelly Sprague.)

The Witness: Yes, sir.

The Court: What happened?

The Witness: And oil was running out and there was nothing [122] that we could do in this compartment, so the chief and I got out of there and shut the watertight door and I told him to do the best he could with all the pumps he had, to try to keep her afloat and went back on deck again and ordered the crew to put on life preservers and close all the watertight compartments in the vessel, probably if she filled up with water she may stay afloat and this was done and I contacted the Coast Guard cutter Balsam, it was standing by, and explained what happened, and I asked him if he had a collision mat aboard.

The Court: A what?

The Witness: A collision mat.

The Court: What is that?

The Witness: It is made out of canvas and manila, something to get in over this hole. The pressure of the water, the sea will hold it there and like a temporary patch.

The Court: What happened?

The Witness: He said that he did and so an attempt was made to pass this collision mat from him to me. It is a very heavy mat. They took—it took them quite a while to get it over the side of the Coast Guard vessel—were right ahead of us and ran, took it to the right quarter and then ran it back on a line. I came back alongside of the hole, the crew turned to trying to get ahold of this mat and get it on deck, but due to the heavy sea and

(Testimony of Kelly Sprague.)

the heavy collision mat we were unable to move it and in the meantime the water got the best of [123] the engineer and he couldn't hold it with the pump and she proceeded to fill up and listed over to the second deck, the boat deck down in the water, and there is an escape hatch from the engine room up on this boat deck and when the water got up to this patch, I hollered down to the engineer to come out of there, nothing more they could do, and the tug Sea Fox was standing right close to us all this time and I called over to them through the megaphone to contact the Coast Guard by radio because mine had shorted out, to come over to pick us out and take us off. So he did that and the Coast Guard boat came over near us and they got a small line across to us and by that means sent a heavier line and a small rubber liferaft and they got that over to us and we started to—ordered the crew two at a time to be transferred from us to the Coast Guard boat.

The first two men got in, one of them, when he jumped into the liferaft, was bouncing, he had to jump into it—he is an elderly man and he bounced out and went into the water and he had a heart attack and died. The rest of us managed, two at a time, to transfer across to the Coast Guard vessel. They had nets hung over the side of the Coast Guard boat and as he pulled us over to him, we, the men, grabbed these nets and climbed up it. The Coast Guard men also climbed down and helped the men up the nets.

(Testimony of Kelly Sprague.)

The Court: It is 12:00 o'clock. You said something, that [124] you were going to some luncheon today that you were the speaker of the day and wanted a little time. Did you take that up with counsel?

Mr. Morse: Perfectly agreeable.

The Court: A quarter after 2:00 then?

Mr. McKeon: Yes, sir.

The Court: Very well.

(Thereupon an adjournment was taken to 2:15 p.m.) [125]

Afternoon Session, Thursday, January 18, 1951

KELLY SPRAGUE

resumed the stand on behalf of the libelants.

Direct Examination

(Continued)

Mr. McKeon: If the Court please, Mr. Morse and I have been discussing some method of trying to shorten the examination and I have witnesses here from out of town, more or less cumulative, and he is not going to call all of his people, so with that in mind we will dispose of some of the witnesses, if the Court please.

The Court: Very well.

Mr. McKeon: Unless Your Honor feels you want more. For example, the mate of this ship, the Neptune here, it would be substantially cumulative. I have got two officers of the Hercules and

(Testimony of Kelly Sprague.)

that will be cumulative—not the Hercules, but the Sea Fox—cumulative.

Mr. Morse: You are going to have the master of the Sea Fox?

Mr. McKeon: Yes.

Q. Captain, from the time you arrived on the scene on the night of the 15th until your tug received her mortal wound, were you exercising your best judgment and efforts to save that vessel and her men? A. Yes.

Q. Again directing your attention to the night of the 15th and [126] the 16th, will you tell the Court in your own language what that weather was and the seas?

A. Well, I would say the wind was blowing between 60 and 70 miles an hour. There was a very huge sea running, heavy swell, mountainous seas, and the wind was breaking the tops of the—blowing the tops of the seas right off.

Q. And on your tug were you shipping green seas?

A. Yes, sir. I was on the boat deck handling controls, we were shipping green seas right over the boat deck. I had to hang on to handle the controls.

Q. Now, during that night the men, yourself and the men on your tug kept going all night?

A. After I decided not to make another attempt that night, I told the majority of the men to try to get a little rest. The tug was rolling so heavily

(Testimony of Kelly Sprague.)

and pitching it was impossible to do anything. I stayed all night on the wheel.

Q. You didn't get any rest, Captain?

A. No, sir.

Q. Did those conditions which you have described continue and prevail when the hawser of the Sea Fox parted?

A. Yes, sir, that was——

Q. It was going that way then, too?

A. Yes, sir.

Q. Now, did those conditions that you have described make the task of your vessel and her men more hazardous? [127]

A. Very much so.

Mr. McKeon: Will you read the question?

Mr. Morse: He said very much so.

Mr. McKeon: I beg your pardon. I didn't hear him.

Q. How many times, or approximately how many times do you remember they did try to float lines to you from the Herald?

A. Just that morning, that one time they put this line out on the buoy and let it go.

Q. Is that the method through which you actually got your line out to the Herald?

A. Yes, sir.

Q. In other words, that buoy was floated to you and then you made a line fast that was pulled back to the Herald and the Herald then started to haul that line in?

A. Yes, sir.

Q. Attached to that line was the pennant connected with your steel hawser?

A. Yes, sir.

(Testimony of Kelly Sprague.)

Q. And they were hauling in the line and they got the line and your hawser up to the chock?

A. Yes, sir.

Q. And they were actually working aboard the Herald trying to get that hawser to make it fast?

A. Yes, sir, they had the wire up to the chock, up to the bow of the ship. [128]

Q. And they didn't succeed in getting that aboard or made fast on the Herald?

A. No, sir.

Q. They, of course, had no power on that vessel? It was all hand power they were working with?

A. Yes, sir.

Q. In other words, the men on the Herald had to do that work physically, with their own hands?

A. That is right.

Q. And I think you said they were working there approximately an hour?

A. I believe an hour, yes, sir.

Q. And that was the situation that they had the line up to the chock when this sea hit you, raised her and you came together?

A. Yes, sir.

Q. Now, Captain, during that interval of easing your way into the Herald with that line, what was your object? Why did you have to do that?

A. Well, the ship was adrift, it was helpless with the 16 men aboard, there was an offshore breeze blowing from the shore, and it was imperative that someone get hold of the ship to save that ship going ashore.

Q. Now, would the men on the Herald, being

(Testimony of Kelly Sprague.)

without power, they had no auxiliary power of any kind, as I understand it, they [129] had to haul that cable of yours in up to their chock and try to get it over the chock? A. Yes, sir.

Q. The closer you got to the vessel the less weight they would have to haul?

A. The closer I could get, the more I could heave and be less weight in the water.

Q. You were attempting to do that?

A. Yes, sir.

Q. Having that in mind?

A. Yes, sir, that was what was taking place.

Q. And during that interval of time were you proceeding as cautiously as you thought you could proceed and still do your job? A. Yes, sir.

Q. Now, after the attempt to get a collision mat aboard and secured on your vessel, your tug, I suppose, took a list? A. Yes, sir.

Q. And she continued listing until she filled and went down? A. Yes, sir.

Q. Now, beginning shortly after you were holed, did you have a hope that you could save your vessel?

A. Yes, I did, sir, with the collision mat.

Q. And all efforts were made to save your tug?

A. Yes, sir. [130]

Q. And it wasn't until some time later that you gave it up as a hopeless task? A. Yes, sir.

Q. Just about that time or shortly after that collision, a naval tender came along there, did it not? A. Yes, it did.

(Testimony of Kelly Sprague.)

Q. That was a big naval tender?

A. A large ship.

Q. And she asked if she could be of any help?

A. She communicated with the Coast Guard vessel.

Q. Was that passed on to you or do you know?

A. No, sir, it was not.

Q. Have you any judgment, Captain, as to where you were with respect to distance offshore at the time of the collision?

A. I would say about twenty miles offshore.

Q. About twenty miles. In this attempt that was made and successfully made, rescuing your crew, officers and yourself from the Neptune, the Coast Guard Balsam got the rubber liferaft or lifeboat to you?

A. Yes, sir.

Q. What was that, a liferaft?

A. A small rubber liferaft.

Q. Liferaft. Were conditions such that they could lower a boat?

A. No, it would have been very dangerous to attempt to lower a boat. [131]

Q. The weather was too bad for that?

A. Yes, sir.

Q. After the hawser parted and the Herald went off drifting in the night, could you observe her drifting? This was before your collision, of course.

A. Yes, sir, we had.

Q. And you kept after her?

A. We kept running slow to keep her in sight.

(Testimony of Kelly Sprague.)

Q. And the Hercules was following along with you? A. The Sea Fox.

Q. I mean the Sea Fox. A. Yes, sir.

Q. Do you know approximately how far she drifted?

A. Well, we were about thirty miles offshore when we came up the previous evening.

Q. She was drifting out to sea, then, or in toward shore? A. Toward shore.

Q. Toward shore? A. Yes, sir.

Q. How far would you say she had drifted in-shore? A. I would say ten miles.

Q. After you got aboard, or were removed from your vessel, you got your officers and your crew got on the Balsam, stayed on the Balsam?

A. Yes, sir. [132]

Q. Did the Balsam, after your vessel sank, put out after the Herald? A. Yes, he did.

Q. And were you, or did you observe the Balsam later that night trying to get, or succeed in getting a manila hawser aboard the Herald?

A. Yes, I did. She got a manila hawser aboard.

Q. What happened to it?

A. After he got it aboard, he came ahead slow to pick up the strain and shortly after he got the strain on the line running slow, the short wire pennant on the manila hawser parted.

Q. Carried away? A. Carried away.

Q. Did you observe the position of the Balsam tug trying to pass that manila line?

A. Yes, sir, I did, sir.

(Testimony of Kelly Sprague.)

Q. Did the commanding officer of the Balsam ask you for your judgment how to do that?

A. He asked me how, what procedure I took, and he made the same approach on the vessel.

Q. He used the same approach at that time that you had previously taken? A. Yes, sir.

Q. Have you had experience in ocean towing on the Pacific? A. Yes, sir. [133]

Q. Over many years, have you not, Captain?

A. Yes, sir.

Q. To all points of the Pacific?

A. Yes, sir.

Q. And a good bit of it in the northern waters?

A. Yes, sir.

Q. Including Alaska? A. Yes, sir.

Q. Have you had any experience of having a tow shearing from side to side?

A. When the wind is blowing strong, yes, sir.

Q. And I suppose the lighter a ship is, the greater the target for the wind? A. Yes, sir.

Q. And this Herald of the Morning was a light ship? A. Yes, sir.

Q. So to speak, it stuck up high out of the water? A. Yes, sir.

Q. And it was a fine target for the wind?

A. Yes, sir.

Q. If such a tow in the wind shoots off the starboard and shoots off the port and runs up ahead of the tug or alongside the tug, in those conditions is there anything a tug can do about it?

A. Absolutely nothing. [134]

(Testimony of Kelly Sprague.)

Q. Have you had that experience?

A. Yes, sir, I have.

Q. Have you been on sister tugs to the Sea Fox?

A. Yes, on the same type of boat.

Q. Captain, if you, bearing in mind your knowledge of the weather that you actually experienced there and had the Herald of the Morning in tow itself, as the Sea Fox did, would you have attempted to bring that tow in over the Columbia River bar?

A. No, I would not.

Q. Why not?

A. Well, the weather like that, a storm like that, the bar would be impassable for a tow of that sort.

Q. First, you got a tow stuck out quite a distance astern? A. Yes, sir.

Q. And you haven't any means of controlling her? A. No.

Q. And it is quite a different thing from a ship going in to the Columbia River under her own power and taking a tow? A. Yes, sir.

Q. You wouldn't bring her in San Francisco Harbor under those conditions?

A. Not in that storm; lay outside until the weather went down.

Q. Or any other harbor?

A. No, sir. [135]

Q. During many years up and down this coast, have you run on to any weather more severe than what you experienced on that spell?

A. That's the worst storm I have been in.

Mr. McKeon: That is all.

(Testimony of Kelly Sprague.)

Cross-Examination

By Mr. Morse:

Q. Do you recall the dimensions of the Neptune?

A. She is approximately 150 feet long.

Q. What horsepower? A. 1400.

Q. So she is a bigger tug than the Sea Fox or Hercules? A. Yes, sir.

Q. What sort of a towing engine do you have on the Neptune?

A. Had an electric towing engine.

Q. Is that one which would automatically ease out and take up——

A. She had an automatic device on her.

Q. So it was an improved type compared to the one that was on the Sea Fox? A. Yes, sir.

Q. What advantage is the towing engine which will ease out and take up on the wire?

A. You can set that so that it will take up at every strain in heavy weather so that you can use more power on the engine of the tug. [136]

Q. It in part compensates for the strain when the strain is put on the wire, doesn't it?

A. Yes, sir.

Q. It acts as an additional safety factor, similar to the anchor chains which are used?

A. Yes, sir.

Q. Did you save your log from the Neptune when it was sunk?

(Testimony of Kelly Sprague.)

A. No, nothing was saved.

Mr. McKeon: Save anything, Captain?

The Witness: Saved most of our lives.

Mr. McKeon: I beg your pardon?

The Witness: Just our lives, that is all.

The Court: That is most important.

The Witness: Yes, sir.

Q. (By Mr. Morse): Approximately what was your position when you received a wireless message on the 14th asking that you come to the aid of the Sea Fox?

A. Approximately 21 hours south of Cape Blanco.

Q. And that would be south of this position?

A. Yes, sir.

Q. And what was the weather at that time in your position?

A. We had strong southeast winds.

Q. It was stormy weather at that time?

A. Yes, sir.

Q. Were you taking green seas over your tug at that time? [137]

A. No, the wind was behind us, we were running with it.

Q. I see. You were headed from a point south of San Francisco or south, back to Seattle?

A. We had just left San Francisco and bound for Seattle.

Q. So that proceeding to the Sea Fox was right in your normal route that you were proceeding to go to Seattle?

A. Yes, sir.

(Testimony of Kelly Sprague.)

Q. So you didn't have to deviate to go to the scene?
A. We were on our way.

Q. Now, while you were in the vicinity of the Sea Fox on the night of the 15th, during the night, you were experiencing green seas coming over your tug, weren't you?
A. Yes, sir.

Q. On the night of the 15th you approached the Herald of the Morning from the lee side when you went up and spoke to it, didn't you?

A. Yes, sir.

Q. Did you have a Lyle gun aboard your tug?

A. Yes, sir.

Q. Did you use it at any time to attempt to put a line to the Herald?
A. No, it was not used.

Q. You did not?
A. No.

Q. How was the line put to the Herald of the Morning from the [138] Balsam, by means of the Lyle gun?
A. Yes.

Q. When you are maneuvering, when you are free and maneuvering in the sea, when do you have the greatest control over your tug, when you are headed into the weather or when you are—when your stern is toward the weather?

A. When you're headed into it.

Q. When headed into the weather?

A. Yes, sir.

Q. Now, at the time you came in collision with the Herald of the Morning, were you headed into the weather or was your stern into the weather?

A. We were stern into the weather because the ship was being driven with the wind and we had to

(Testimony of Kelly Sprague.)

proceed with the wind. The weather would be on our stern.

Q. I didn't quite understand the explanation.

A. The ship is being driven by the wind and we would have to have our stern towards the wind, too, to keep up with the ship; otherwise you would have your bow into the wind, you would be backing down with the wind and you have absolutely no control of the vessel, the tug.

Q. With your bow into the weather you would have no control over your tug?

A. When you are backing your tug, she would back one way and you're back in a circle. [139]

Q. Now, getting back to the time when you got a line, they drifted a line to you and you picked it up, wouldn't it have been feasible for you to have circled around, come up on the lee side, lee and forward of the bow?

A. That was done, an attempt was made like that.

Mr. McKeon: I have difficulty hearing you.

A. (Continuing): An attempt was made like he mentioned there, but it was the way the *Herald* was drifting. It was impossible to hold the tug in close enough position to get a line to them without endangering the tug *Neptune* or getting broadside and having the *Herald of the Morning* drift on top of her.

Q. I am suggesting after you had received the line from the *Herald*, wouldn't it have been feasible for you to make a circle and come around so that

(Testimony of Kelly Sprague.)

you were forward of the bow and on the lee side?

A. Still have the ship being driven down toward you.

Q. You would have been forward of the beam—forward of the bow of the Herald of the Morning. I am suggesting you come up in the lee of the Herald of the Morning. You understand what I am trying——

A. I am sorry. I don't quite understand.

Q. With the aid of these models, if the Herald was in that position and you had gotten your line here, wouldn't it have been feasible for you to come around in that manner (indicating) so that you would have had your bow headed into the [140] storm?

A. This ship was drifting away, driven from us.

Q. This ship drifting broadside?

A. Yes, sir.

Q. Wouldn't it have been feasible for you to come around so that you had your bow headed into the storm?

A. Like this (indicating)?

Q. Well, that is the way you were at the time you came in collision?

A. How did you want me to go?

Q. I am trying—I am not—I am asking you if it wouldn't have been feasible for you to maneuver this way, or clear around this way, and come up so that your bow was headed into the storm?

A. Not with the line between us and the ship.

The Court: What about the line?

(Testimony of Kelly Sprague.)

The Witness: That would be impossible with this line between us and the ship.

Q. (By Mr. Morse): Couldn't one of your men have walked it over your tug, or around your tug as you made your circle?

A. Even in calm weather it takes a lot of room to turn your tug like that, to make a circle.

Q. There was a whole ocean.

A. Wasn't a whole ocean. There was a line between us, just a short line.

Mr. McKeon: Also drifting ships.

Q. (By Mr. Morse): Anyway, that is your explanation why you [141] didn't do it that way and you didn't think it was desirable to do it that way?

A. Absolutely not.

Q. As I understand you, you said one reason you came up to 75 feet forward of the bow was in order to minimize the weight of the cable which the men on the *Herald of the Morning* were endeavoring to pull aboard the *Herald of the Morning*?

A. Yes, sir.

Q. And where was your bow, the bow of the *Herald of the Morning*, just directly forward of the bow of the *Herald of the Morning*?

A. No, sir, to the windward of the bow of the *Herald of the Morning*.

Q. All right. Approximately what distance?

A. Well, at various distances. It was a heavy sea, both yawing back and forth.

Q. Yes, but at the time you said you were about—at the time you came in collision, as I understand

(Testimony of Kelly Sprague.)

it, you said you were about 75 feet and the wave lifted you and drove you into the bow?

A. Yes, sir.

Q. And what was the angle of your vessel with reference to the fore and aft line of the Herald of the Morning immediately before this wave drove you against the Herald of the Morning?

A. Approximately 90 degrees, or at right [142] angles.

Q. All right, then. There was that 75 feet distance plus the full length of your ship?

A. The length back to the towing machine.

Q. Which would be approximately 130 feet aft, I suppose, from your bow?

A. Approximately, yes, sir.

Q. Had you been on the leeward side instead of on the weather side of the Herald of the Morning, that 120 or '30 feet of line would not have been out, would it? By that I mean your towing engine would have been that much closer to the stem of the Herald of the Morning?

A. Yes, an original attempt was made along that line, but it couldn't be done without danger of our tug broaching the side of the other ship and being driven together.

Q. Will you explain that to me, please? Strike that just a moment.

When you were out maneuvering were you on the windward side, were you able to control your tug out there as to the angle of approach you were making?

A. Yes, sir.

(Testimony of Kelly Sprague.)

Q. Then why couldn't you have controlled your tug if you had gotten on the lee side forward of the bow?

A. Because the ship—I tried that, sir, and the ship drifted away from me.

Q. What had that to do with the ability to control your own [143] tug?

A. I don't quite understand.

Q. The drifting of the Herald of the Morning had nothing to do with your ability to control your own tug, did it?

A. The Herald of the Morning had nothing to do with the control of the tug, no, sir.

Q. I am unclear in my mind on this point of the anchor chain. When you went up and spoke to the Herald of the Morning, did you ask him to drop—I mean, let it go to the bottom of the ocean, the port anchor, so that you could use the port anchor chain?

A. I asked him if he had any chain and he said no and I asked him if it was possible to lower it down to the first port, first shackle, connecting shackle, and he threw his hands up in the air. As far as chains were concerned, they were all finished, that the Sea Fox had used up all their chain.

Q. And was he referring to his port anchor or referring to his starboard?

A. I didn't care which chain it was. All I wanted was a piece of chain.

Q. Could you see the starboard chain hanging in the water?

(Testimony of Kelly Sprague.)

A. I knew that the hawser of the Sea Fox was fastened to it.

Q. Now, when you said the Herald of the Morning had drifted from the time you were in collision until a subsequent time, I don't remember exactly now what it was, she had drifted about [144] ten miles nearer shore, did she drift due east toward shore or did she drift upward, up the coast and toward shore?

A. Up the coast and toward shore.

Q. And the wind would have been from which direction?

A. More in the southwest direction, or southerly.

Q. You said that the Balsam shot a line to the Herald of the Morning when you were aboard the Balsam?

A. Yes, sir.

Q. And they succeeded in getting their ten-inch line to the Herald of the Morning?

A. Yes, sir.

Q. So obviously the men of the Herald of the Morning were able by the strength of their own efforts to pull that line aboard?

A. They used a manila line which will float on the water. We had a heavy steel cable.

Q. But they did succeed in getting it aboard?

A. Yes, sir.

The Court: How was the sea at that time?

The Witness: Very rough.

Q. (By Mr. Morse): About how far forward of

(Testimony of Kelly Sprague.)

the *Herald of the Morning* was the *Balsam* when this operation was being conducted?

A. Would you repeat that?

Mr. McKeon: At the time she shot the line [145] out?

Q. (By Mr. Morse): When they put that ten-inch hawser over, how far distant was the *Balsam* from the *Herald of the Morning*?

A. I was below decks observing this through a porthole on the side towards the *Herald of the Morning* and he made the same approach I did and it looked for a minute like the same thing was going to happen to him that did to me. He was being driven right into the bow of the ship.

Q. Well, you still haven't answered my question. Approximately what was the distance between the two vessels? What would you say the minimum distance was?

A. I would say about 75 feet, observing from where I was.

Q. And you said he made the same approach. Now, during the night or early morning hours, dark hours of the 16th, you came up on the lee side. Was the *Balsam* on the lee side?

A. Was the *Balsam* on the lee side?

Q. Yes, sir.

A. When they put the line aboard?

Q. Yes, sir.

A. No, he was on the bow of the ship.

Q. Forward? A. Forward.

Q. Now, bearing in mind the fact that the *Her-*

(Testimony of Kelly Sprague.)

ald of the Morning was drifting broadside to the wind, isn't it a fair statement to say that the Balsam was not on the weather side of the Herald of the Morning? [146]

A. She would be on the weather side in the same respect we were.

Q. Well, let us put it this way: Was the wind blowing in the same direction that the waves were, the line of the waves were? A. Yes, sir.

Q. So that if the wind was coming from the southwest, then the waves also were coming from the southwest? A. Yes, sir.

Q. So what would right angles to the southwest be? A. Southeast.

Q. Southeast and northwest?

A. Northwest would be—yes, sir.

Q. With the wind and waves coming from the southwest and the Herald of the Morning being broadside— A. Yes, sir.

Q. Then the bow of the Herald of the Morning would be pointed northwest; is that a fair statement? A. Yes, sir.

Q. And that was the approach the Balsam—to the northwest of the Herald of the Morning when it put its ten-inch line aboard? A. Yes, sir.

Q. When you were thrown against the bow of the Herald of the Morning, were you directly forward of the bow or were you a bit [147] toward the weather side of the bow?

A. The bow of the Herald of the Morning struck our side.

(Testimony of Kelly Sprague.)

Q. I understand that——

A. About 20 feet back on the starboard side.

Q. My question—I guess I don't make myself clear.

What was your position with reference to the fore and aft length of the Herald of the Morning? Were you directly ahead of the Herald of the Morning or were you on the weather side of that position?

Mr. McKeon: He said he was at an angle of about 90 degrees.

A. And slightly ahead of the ship in order to keep clear, had to keep kicking toward the ship.

The Court: There are two models here. You might——

Mr. McKeon: He has shown it on the models already.

Q. (By Mr. Morse): In order to clear it up in my mind again, will you show me your position?

A. There is the Herald right there (indicating), slightly ahead and at right angles, approximately right angles.

Q. All right, with the Herald of the Morning being broadside to the wind and waves?

A. Yes, sir.

Q. Your position would have been on the port, not on the weather bow, wouldn't it?

A. Yes, the same as the Balsam, ahead and to the weather side. [184] This tug here has a tendency to broach the same as that, and I ran slow,

(Testimony of Kelly Sprague.)

I don't have the control, dead slow, I have to kick it stronger to keep it fore and aft with the wind.

Q. With reference to the fore and aft dimension of the Herald of the Morning, what was the angle of the fore and aft dimension of the Balsam when they were in this process of putting this line aboard?

A. I am at this time down below inside the Balsam looking out of a porthole, but I would say approximately at right angles.

Q. Were you on deck when the ten-inch hawser pennant parted?

A. I observed that through the porthole, sir.

Q. It is a little bit confusing to me. I don't know that it is an important point, but it wasn't the ten-inch hawser itself?

A. I didn't mean that it was—it was a wire pennant attached to the hawser.

Q. And that was on the Herald of the Morning or on the hawser of the Balsam?

A. On the Herald of the Morning.

Q. The Balsam came out of the Columbia River on the 14th of November, didn't it?

A. I don't know. She was there when we arrived there.

Q. So you don't know from which area she came?

A. I know that she is stationed in Astoria.

Q. The Balsam took you into Astoria, didn't they? [149]

A. Yes, sir.

Q. This was on the 16th, during the height of the storm?

(Testimony of Kelly Sprague.)

Mr. McKeon: The 17th.

The Witness: No, the next morning. We stayed there that night—no, the evening of the 17th.

Q. My records show two or three o'clock in the afternoon of November 17 they went into Astoria.

Mr. McKeon: They may have left at that time.

A. We arrived around 5:00 o'clock in the evening of the 17th.

Mr. Morse: No further questions.

Redirect Examination

By Mr. McKeon:

Q. Captain, having in mind this discussion about getting over on the opposite side of the bow than the one you did operate on and trying to work in to get a line aboard that vessel, what you did was your best judgment at the time, wasn't it?

A. Yes, it was, and still believe that would be the only way to approach the vessel in those conditions.

Q. You not only had the situation of trying to protect your own tug, but also trying to do a job there, weren't you? A. Yes, sir.

Q. And you would have to take into consideration the weight of the cable that you had to get up from the other side and the control of the tug at the same time?

A. Yes, sir, in keeping the towline clear of the propellers [150] so we wouldn't be disabled.

Q. That is always a real danger, isn't it?

(Testimony of Kelly Sprague.)

A. Yes, it is.

Q. And if you got your propeller fouled, you would be through? A. Yes, sir.

Q. Talking about the Neptune, she is rated as 1400 horsepower? A. Yes, sir.

Q. Does she have any more power than the Hercules or the Sea Fox?

A. They are rated at 1200, but——

Q. I am talking about a comparison.

A. No.

Q. You get as much power out of the Hercules as you will out of the Neptune?

A. I just made two identical trips to Panama, one on the Hercules, which is a sister ship of the Sea Fox, and got off her and made the identical trip with the Neptune; we made the same speed.

Q. She is the equivalent in power?

A. Yes, sir.

Q. She is the standard large-sized ocean-going tug? A. Yes, sir.

Q. And they are new tugs, aren't they?

A. Yes, they were built by the Army.

Q. 1944 and 1946 periods? [151]

A. Yes, sir.

Q. I am talking about the Sea Fox and the Hercules.

A. Yes, sir, they were built by the Army during the war.

Q. And they are known as the Mickey type, aren't they? A. Yes, sir.

(Testimony of Kelly Sprague.)

Q. None of those types have the automatic re-leasing gear? A. No, they don't.

Q. They have standard equipment?

A. Yes, sir.

Q. And the drum is constructed for an inch and three-quarters, for 1¾-inch towing wire?

A. They have a spooning device and the only size wire that will work on there.

Q. But they are built for that particular size wire? A. Yes, sir.

Mr. McKeon: I think that is all.

The Court: Step down.

Call your next witness.

Mr. McKeon: Captain Sommer. Is Captain Sprague free now?

Mr. Morse: Yes.

The Court: He may be excused.

Mr. McKeon: You are excused, Captain, and thank you very much. [152]

RUDOLPH K. SOMMER

was called as a witness on behalf of the libelants; sworn.

The Court: What is your full name?

A. Rudolph K. Sommer, S-o-m-m-e-r.

Q. What is your business or occupation?

A. Captain of a tug, the tug Sea Fox.

Q. Captain of the Sea Fox? A. Yes, sir.

Q. How long have you been on the Sea Fox?

A. About six years.

(Testimony of Rudolph K. Sommer.)

Q. Six years? A. Yes, sir.

Q. And where? Did you have any regular run?

A. No, just towing around the Bay.

The Court: All right.

Direct Examination

By Mr. McKeon:

Q. General tugboat service. I am going to try to be brief and not cover all the territory we covered with the other witnesses. Were you master of the Sea Fox leaving here with the Herald of the Morning in tow? A. Yes, sir.

The Court: I will offer a suggestion. Tell us what you know. What happened after you left?

A. Leaving San Francisco—it was on November the 5th—and after getting out through the Golden Gate on the 6th—I forgot [153] some of the dates; I am confused on the dates—we ran into a strong northwest gale just this side of Point Arena and the tow was going from right to left; we couldn't control the tow; it was out of control. At that time we signaled to the Herald of the Morning to slack out another extra length of chain, another shot, which they did, but the ship still wouldn't straighten out.

And we proceeded going ahead with the ship and the tug and were making sternway. Then on the afternoon of the—I will have—can I have the log to see the date?

The Court: Do you have a log?

(Testimony of Rudolph K. Sommer.)

The Witness: Yes.

Mr. McKeon: Yes, sir.

Mr. Morse: This is it: Respondent's Exhibit A for identification.

Mr. McKeon: This is the same that Reichel was on, Your Honor.

The Court: Did you make any entries on the log yourself?

A. Yes, I did; yes, sir.

Mr. McKeon: I think each officer on watch makes his entries, Your Honor.

The Court: What day was it?

The Witness: It was on the 6th and 7th—on the afternoon of the 7th, towing wire parts and the ship is on her own, drifting out. We tried to get another wire aboard that night, [154] but the crew of the ship had a hard time, difficulty in letting go of the chain, so we just stood by that night. We put an extra wire aboard the ship on the morning of the 8th, and after we got the wire aboard we had difficulty—the wire got fouled on the drum, so we only got about, oh, three or four hundred feet of wire out and we proceeded towing toward Drake's Bay.

In the meantime, we communicated with the San Francisco office and they sent another boat on out to assist us, the Sea Prince came out and took over the tow, towed her into Drake's Bay and we followed on in, clearing our drum to get the other wire off the Sea Prince.

After the wire was transferred from the Sea Prince to the Sea Fox's towing drum, we proceeded

(Testimony of Rudolph K. Sommer.)

to tow the ship to Everett, and we had then again ran into northwest gales, heavy seas.

Mr. Morse: May I interrupt, please? When you say "northwest gale," what wind force are you referring to?

The Witness: Around 25, 30, blowing along in there.

Mr. Morse: What would it be on the Beaufort's scale when you refer to a gale?

The Witness: Well, that would be about 8, 10, a gale.

Mr. Morse: That is 25-30 miles an hour you described the Beaufort scale as 8 to 10. It is easy to describe those wind forces——

The Witness: You want what the wind force was?

Mr. Morse: Yes. [155]

The Witness: O.K. That is on the 7th.

Q. (By Mr. McKeon): You were on your way up out of Drake's Bay?

A. On our way north.

Q. Run into some other weather around the 13th or 14th? A. Yes.

Q. By the way, did you lose your towing board before your hawser parted on the 7th?

A. Yes, sir, the towing board went over the side. We couldn't get that back in again on account of the weather.

The Court: When was that?

The Witness: On the 7th. The towing board goes over the side, and the wire, when that is over the

(Testimony of Rudolph K. Sommer.)

side, the wire just kept on running around the stern, no protection for it.

Q. With the Herald swinging starboard to port?

A. Swinging starboard to port, causing the wire to chafe.

Q. Turn to the 13th or 14th, Captain, and then go on, if that is what the Court wants. When did you next run into some bad weather?

A. On the 14th.

The Court: What happened on the 14th? Tell us about it.

Q. (By Mr. McKeon): Captain, tell us about it from your recollection, if you have one.

A. On the 14th we encountered stormy weather, strong southeast about 8, 10 force, 8 to 10, between that, and the towing winch [156] the wire slips out and we couldn't hold the drum. The gears let go, so we had to put a piece of wire—iron into the gear on the starboard side of the drum and block off the winch so she couldn't pay out any more.

Q. That was to try to secure her, the drum?

A. Secure the engine on the tug.

Q. Then what happened?

A. Then we were drifting with the Herald toward the beach. It was off Tillamook, I am pretty sure, that night, about twenty miles. We contacted the Coast Guard, San Francisco office. The Coast Guard sent the Balsam out from the Columbia River. She arrived on the scene around 10:00 o'clock at night. She tried to get a line aboard the ship, but couldn't do so on account of the heavy sea.

(Testimony of Rudolph K. Sommer.)

So we proceeded slow, half speed, straight out to sea with the *Herald of the Morning*. That afternoon the office contacted us and told us that the *Neptune* was on her way north. She arrived on the scene, it was around—I don't know what time that was—at any rate, she arrived on the scene and due to the heavy weather, tried to get a line aboard; couldn't make it.

So she stood by for the rest of the evening. That night, about, oh, I would judge, about 12:30, 1:00 o'clock our hawser parts.

Q. How was the weather then?

A. It was blowing a gale at that time, a strong gale, about, [157] I should judge, about 10, 10 and 8 force. So then the *Herald of the Morning* was on her own, drifting. So in the morning the *Neptune* tried to get a line aboard; she had great difficulty in doing so. How many attempts she made—I think she made two or three attempts and the last attempt, why, she got hit.

Q. She what?

A. She got hit on the—made contact with the ship's bow and got in collision with the ship, stove a hole in on her starboard quarter, I think it was amidships somewhere, and she floundered around and finally sank, and they rescued the crew, the Coast Guard took the crew off the *Neptune* and after they took the crew off, the *Balsam* started out after the *Herald of the Morning*. The *Sea Fox* stood by the *Neptune* until she sank.

Q. Who directed you to do that, if anyone?

(Testimony of Rudolph K. Sommer.)

A. The commander of the Coast Guard, the Balsam.

The Court: From the time of the collision, what time elapsed until the boat sunk?

The Witness: Oh, it took her about five hours to sink, I imagine.

Q. (By Mr. McKeon): Several hours?

A. Took several hours to sink her, slow sinking. So after the Neptune sank, why, we radioed the Coast Guard and got our position and we headed for the Herald of the Morning which—she was drifting over toward, close to Grays Harbor.

Q. That is north of the Columbia River? [158]

A. Yes. So we got there, why, the Herald of the Morning was still drifting towards the beach and the Coast Guard commander on the Balsam radioed us and said she would be on the beach by midnight and for us to hurry up and get there. So we went as fast as we could get there. When we got there, why, I signaled over to the captain of the Herald of the Morning to drop his anchor, which he did, but he didn't give her her chain, so we went around the stern and told him to give all the chain he had and he gave it nine shots of chain and she held then, she laid quiet for the night. The sea moderated a little during the evening and——

Q. Had she been dragging?

A. No, I don't think she dragged any because she got bearings off the Balsam, she seen the bearings she was holding. She may have dragged a little be-

(Testimony of Rudolph K. Sommer.)

fore they gave her the nine shots; after that she was holding pretty well.

So the morning the Balsam, she left and the Wiconna appeared on the scene. So in the morning around 10:00 o'clock, why, she sent a twelve-inch line aboard with a shot and made—they made it fast to the bitts of the Herald of the Morning and gave us the other bitter end which we made fast to the wire pennant we had and we kept on slow ahead all that night until the Hercules arrived on the scene.

Q. The next day?

A. Whole afternoon, that night, and the next day—the Hercules [159] arrived on the scene. Sea and wind was kind of moderated, but it picked up again that night when we started towing, a full gale——

Mr. Morse: Full gale. What force are you referring to?

A. Well, around 8 and 10, a pretty good gale, and we had that all, practically all the way up. But there was some difficulty in letting go of the—we were always getting in irons before we got away from the Herald of the Morning, getting in tow again, on account of the wind and sea, the anchor chain was fouled, wouldn't let go.

The Court: Anything else happen?

The Witness: That will be all that I know of now.

Q. (By Mr. McKeon): You have now taken us up to the point where you now got that manila

(Testimony of Rudolph K. Sommer.)

to the Herald and you were standing by?

A. Yes.

Q. And the Hercules arrives? A. Yes.

Q. And the Hercules arrives and got a line aboard the Herald? A. Yes.

Q. Did you observe the conditions at that time? How were the swells, for example?

A. There was a moderate swell at that time when we started towing.

Q. At the time you started towing? [160]

A. But the wind was commencing to pick up a little from the southwest and shifted around to southeast.

Q. Was the wind hauling around differently, from different directions?

A. Southwest that day she was anchored, that night was quite a swell running, though.

Q. Then you got on your way, the Hercules having the Herald in tow up the coast? A. Yes.

Q. Did you strike any blow thereafter? Both had them in tow?

A. Yes, it was fast getting a storm.

Q. What would that be in miles, roughly?

A. I should judge around 55, 60 miles.

Q. And you eventually brought the Herald into Everett and put her alongside—would that be on the 19th? A. I believe it was the 19th.

Q. Look at it and see if that is the time.

A. Yes, it was on the 19th.

Q. In your judgment, Captain, with the weather you experienced there and knowing the conditions

(Testimony of Rudolph K. Sommer.)

of the tow and tug, do you think it would have been prudent or good judgment to have attempted to take that tow in over the Columbia River bar?

A. No, I do not.

Q. How far south of the Columbia River were you at that time?

A. South of the Columbia River? [161]

Mr. Morse: Which time are you referring to?

The Witness: I don't—

Mr. McKeon: On the 14th.

A. On the 14th? Oh, no idea.

Q. Roughly.

A. Let's see. On the 14th, left Grays Harbor—well, make it about 40, 45 miles, something like that.

Q. And in the exercise of your best judgment you and your mates concluded to put out to sea?

A. Yes.

Q. Headed right out to sea?

A. Headed right out to sea, yes, sir.

Q. That is what you would have done off San Francisco in the same situation, isn't it?

A. Yes, sir.

Q. Taking a large tow in over the bar is quite a different thing than a powered ship going in or out? A. Yes, quite a lot of difference.

The Court: We will take a recess.

(Short recess.)

Mr. McKeon: Before I forget it, I would like to interrupt, if the Court please, to have the Captain, if he will, look at the amendment to the libel which sets forth the names of the men aboard his

(Testimony of Rudolph K. Sommer.)

tug, the Sea Fox, at the time. That is the list there, Captain? [162]

A. Yes.

Q. That is correct?

A. Yes.

Mr. McKeon: Then let the record show that the Captain has identified the personnel on his tug as shown by the men named in the amendment to the libel.

Mr. Morse: This would be a good time, perhaps, to mention about the valuation of the Herald of the Morning. I phoned Captain Pillsbury last evening and he stated he would be unwilling to agree to the low valuation I mentioned yesterday. He thought the valuation of \$375,000 would be about the minimum he could fairly place.

Mr. McKeon: I would stipulate, if the Captain were called, he would testify that the minimum value he would put on the vessel would be \$375,000.

The Court: Let the record so show.

Q. (By Mr. McKeon): During these times, Captain, that you were describing, let us say, on the 16th when you had hold of the Herald, were you shipping seas?

A. Yes, sir.

Q. Taking green water?

A. Yes, sir.

Q. And after your hawser parted, did you put out after the Herald?

A. Yes, sir. [163]

Q. And would those—I think you classified that as a strong gale at that time?

A. Yes.

Q. Did that condition continue pretty much that night?

A. Yes.

Q. Now, what was the situation with respect to endangering your men in that sort of weather?

(Testimony of Rudolph K. Sommer.)

A. Endangering the men?

Q. Yes.

A. Well, they were in danger, yes, could have been washed overboard, got hurt with a wire or something.

Q. In your opinion, Captain, was the Herald of the Morning after your wire parted, in danger?

A. Yes, she was.

Q. What kind of danger would you——

A. Well, drifting toward the beach.

Q. In other words, unless she was rescued or her anchor held, she might go ashore?

A. Yes.

Q. I suppose there is always the danger of a drifting vessel colliding with another vessel, too?

A. Yes.

Q. Did that vessel, the Herald, at that time, have navigation lights?

A. Well, if she did they were very poor; you couldn't see them. [164]

Q. You had trouble seeing them?

A. Yes, you couldn't see no lights, even on that night you couldn't see any lights.

Q. She didn't have any power aboard?

A. No power, no color lights, I imagine.

Q. And she was flying high out of the water?

A. Out of the water high.

Q. What was the effect, what would the effect be of a vessel flying so high in those strong winds?

A. Well, she's just helpless.

The Court: Bobbling around like a cork.

(Testimony of Rudolph K. Sommer.)

The Witness: Like an empty box, you know.

Mr. McKeon: I prefer Your Honor's description.

The Court: I think somebody used "cork," some one of the other witnesses.

Q. (By Mr. McKeon): Did the Balsam give you any indication of the time it was calculated the Herald would go ashore?

A. Yes, they radioed us and told us to get up as soon as we could since the Neptune sunk, she would be on the beach by midnight, they figured.

Q. Then when—were you trying to get her into a position in shoal water where you might get her anchors down?

A. No, she was just drifting. We just went up to her when we got there, told her to drop the anchor, about 30 fathoms of water. [165]

Q. Did you have any discussion with the master or anybody else on the vessel about letting go that anchor?

A. I hollered over to the master and he hollered back it was the captain's orders to drop the anchor; I told them it was the captain's orders to drop their anchor.

Q. Did it take some time?

A. Took a little.

Q. To get a meeting of the minds on that?

A. Yes, it took a little time to get going on that. Finally the anchor went down.

Q. In that connection, what were your directions

(Testimony of Rudolph K. Sommer.)

with respect to the number of shots they should let go? A. Nine shots.

Q. Did they let go nine shots?

A. Not at first; only about four or five shots. Of course, she was still drifting.

Q. You don't know whether they let go any additional shots? A. No, I don't.

Q. About how long, if you remember, did it take for the Hercules, after her arrival, to get a line fast, or how long was she engaged in doing it?

A. Well, about three hours, two and a half hours, three hours.

Q. Could you tell whether or not the men on the Hercules were working on deck?

A. Not at that time. [166]

Q. Couldn't tell? A. I couldn't tell, no.

Q. Captain, beaing in mind the blow that you got into on the night of the 18th when you had the Herald in tow of the Hercules and yourself, you recall that night, that blow? A. Yes.

Q. If that blow had occurred while the Herald was at anchor, the one anchor down, do you think she would have been able to weather it?

A. No, she wouldn't have been able to weather it.

Q. What do you mean by that?

A. Because she wouldn't on account of the heavy seas, she would drag the anchor and go for the beach.

Q. In other words, a single anchor would not have held her?

A. No, one anchor would not hold her, no.

(Testimony of Rudolph K. Sommer.)

Mr. McKeon: I think that is all.

Cross-Examination

By Mr Morse:

Q. Captain, do you have your master's license with you? A. No, sir, I have not.

Q. I beg your pardon? A. No, I haven't.

Q. You have a master's license?

A. Limited.

Q. Limited? [167] A. Limited.

Q. Limited to what area?

A. San Francisco Bay and tributaries.

Q. You do not—— A. Lakes and sounds.

Q. You do not have a master's license permitting you to—— A. No.

Q. ——be captain of ocean-going vessels?

A. No.

Mr. McKeon: What ocean-going vessels are you talking about? Wasn't obligated to have a master's license for this tug, if that is what you mean.

Mr. Morse: I was asking him if he did have one.

Mr. McKeon: You said "vessels," I want it to be clear.

Q. (By Mr. Morse): You do have a master's license on—— A. No.

Q. Are you obligated to have a master's license unlimited to captain the Sea Fox offshore?

A. No.

Q. How long have you served as master on an ocean-going tug?

(Testimony of Rudolph K. Sommer.)

A. How long? Oh, about two years.

Q. Was this, the occasion of this incident the first time you served as master of an ocean-going tug?

A. No, no.

Q. How many voyages? [168]

A. I had about 16 trips up the coast, 16 or 17.

The Court: 16 trips up the coast.

Q. (By Mr. Morse): Prior to the Herald of the Morning trip?

A. I towed four ships up the coast before that.

Q. Captain, is it a fair statement to say that the storm that you experienced on the 10th was the worst storm you had ever experienced in your sea career?

A. Yes, it was, it really was a storm.

Q. Is it a fair statement to say that the entries made in the course—Strike that.

Did you examine the entries made in the log as to the positions and weather conditions from time to time on this particular voyage?

A. Yes.

Q. And they are accurate as you observed them?

A. As accurate as I can remember, yes.

Q. So that if the log showed a wind force of 6 or 7, say, on a given date, that would have been a fair representation of the existing conditions?

A. Yes.

Q. As I understand it, you lost your towing board before you put back into Drake's Bay?

A. The towing board went over the side.

Q. Was that towing board replaced?

A. Yes, we had another, we had another one on board. [169]

(Testimony of Rudolph K. Sommer.)

Q. And did you put on the extra one?

A. We put on the extra one after we left Drake's Bay.

Q. Was the towing board which you lost fixed to the end of the wire which went overboard?

A. Yes.

Q. That was how you lost the board, is it?

A. Yes.

Mr. McKeon: What is that question and answer?

(Record read.)

Mr. McKeon: What were?

Mr. Morse: This is the Drake's Bay incident.

Mr. McKeon: What wire went overboard?

The Witness: The wire parted.

Mr. McKeon: That is not overboard. There is no testimony any wire went overboard then.

Mr. Morse: Well, Mr. McKeon, that is my recollection of it: it parted and went in the—also one went overboard. That is the only thing I meant.

Mr. McKeon: Well, the towing board parted. I think the witness testified the towing board parted before and prior to the wire breaking, so that the board couldn't go overboard with the wire at that time, is that right?

The Witness: The board went overboard with the wire—the board went over the side first.

Mr. McKeon: Yes. How long after the board went over did [170] the wire part?

The Witness: Oh, that was about two or three hours.

(Testimony of Rudolph K. Sommer.)

Mr. McKeon: That is what I am talking about. It is so easy to just answer a question that you don't understand and then you have explanations afterward.

The Court: We will blame it on the lawyers.

Mr. McKeon: That was the reason, the question hit me in the eyes, wasn't any testimony of wire going over.

Q. (By Mr. Morse): When you went up to the Herald of the Morning on the night of the 16th and told her to drop her anchor, did you tell her immediately that you came in the vicinity of her?

A. Yes, we did, yes.

Q. Had you been told by the Balsam to instruct him to drop his anchor at the 30 fathom line?

A. No, the Balsam, the Balsam radioed us and told us to tell them to drop their anchor when we got up there. They would be on the beach if they didn't.

Q. Didn't the Coast Guard vessel Winona arrive before the Balsam took the Neptune trip to Astoria?

A. Yes.

Q. And the Winona remained in the vicinity until the Balsam returned? A. Yes.

Q. And also remained in the vicinity until the Hercules came [171] to the scene?

A. The Hercules arrived.

Q. And it was only after the Hercules arrived that the Winona left? A. Yes.

Q. Did the seas continue, green seas continue to

(Testimony of Rudolph K. Sommer.)

come over the Sea Fox on the morning of the 16th after the line had parted? A. Yes.

Q. Does your logbook show the positions, your noon positions as you were proceeding up the coast?

A. Some of them, yes, shows some of the positions, not every day. It was dead reckoning most of the time.

Q. It was overcast so that you were unable to take sights?

A. Yes, and we were steering various courses, too, on account of the wind, heading out mostly all the time.

Q. You were in sight of shore most of the time?

A. Yes.

Q. But the positions, they were as accurate as you could compose them? A. Yes, sir.

Q. Was the threader on your winch broken or disrupted? A. The what?

Q. The threader. A. Threader? [172]

Q. Threader, I think that has been called——

Mr. McKeon: The traveler.

The Witness: The traveler. Yes, that was broken.

The Court: What is the traveler?

The Witness: It is a——

Mr. McKeon: A device to——

The Witness: Wind in the wire.

Mr. Morse: To put the wire in the proper position when it winds on the winch.

The Witness: Coils the wires.

The Court: Guides it?

(Testimony of Rudolph K. Sommer.)

The Witness: Yes, guides it.

Q. (By Mr. Morse): Was it affected in the Drake's Bay incident?

A. No, after that, the night we had the heavy blow which carried it away the second time.

Q. (By Mr. Morse): The night of the 16th then? A. That is when she got in the strain.

Q. It had not been affected prior to the night of the 16th, night of the 15th, I should say.

A. No.

Q. That is correct? A. Right, yes.

Q. This is a little bit confusing, because we have several instances here. As I understand it, the teeth of your gear broke on the 14th? [173]

A. Yes.

Q. Was that the time when the traveler was damaged?

A. Yes, I guess it was, I don't remember now.

Q. You are not sure whether it was at that time or when the wire—— A. No.

Q. ——broke away?

A. No, I don't remember.

Q. Did you ever use a bridle when you tow a vessel?

A. No, sir, never use a bridle, always use the anchor chain for a spring.

Q. Did you ever use—the anchor chain will come out of one bow, say, the port bow? A. Yes.

Q. Let us call it the starboard bow, because it was the starboard chain of the Herald.

A. Starboard chain.

(Testimony of Rudolph K. Sommer.)

Q. Had you ever had occasion to use a preventer wire or guy from the port bow to hook forward on the chain? A. No.

Mr. Morse: I have no further questions.

Redirect Examination

By Mr. McKeon:

Q. You didn't have anything to do with making up this tow, did you, Captain?

A. No, sir. [174]

Q. The surveyor to the underwriters is the one that took charge of that?

A. Yes, I presume so.

Q. These figures that are down, that you have mentioned, 7, 8 and 10 on the Beaufort scale, you haven't any machine to measure those forces, have you, aboard the tug? A. No, we have not.

Q. And you are just giving us the estimates of the men who——

A. The Balsam radioed us that night.

Q. I am not talking about the Balsam, Captain—I am talking about——

A. No, we have got no machine.

Q. Wait a minute. Let me ask the question. What I am asking you is, the 7, 8 and 10 figures that you have mentioned are supposed to be on the Beaufort scale? A. Yes.

Q. They are estimates of your tug?

A. Yes.

Q. And they are estimates of somebody who figured that was the force of the wind at that time?

(Testimony of Rudolph K. Sommer.)

A. Yes.

Q. They may be off or on, they may be high or low?

A. Yes.

Mr. McKeon: That is all. [175]

Recross-Examination

By Mr. Morse:

Q. Did you keep a radio log on your vessel?

A. No, sir.

Q. You did communicate with your owners and told them you were in trouble?

A. Yes.

Q. What instructions did you receive from them?

A. Well, they told us that the Neptune was on her way from—north, that she would assist us.

Q. Did you ask for assistance from any of the Foss tugs?

A. No, sir.

Mr. Morse: No further questions.

Mr. McKeon: That is all, Captain.

The Court: Step down. [176]

Mr. Morse: While Captain Sprague is here, I would like to ask him one further question, if I may do so.

Q. Captain, had you not been contacted by the Sea Fox interests, would you have put into the Columbia River during the storm or would you have proceeded on to Seattle?

Captain Sprague: Proceeded on to Seattle.

Mr. Morse: Thank you. No further questions.

The Court: Call your next witness.

Mr. McKeon: Captain Flagstad.

GEORGE OLAF FLAGSTAD

called as a witness on behalf of the libelants; sworn.

The Court: What is your name?

A. George Olaf Flagstad.

Q. How long have you been going to sea?

A. Oh, about fifty years.

Q. How long have you been acting as a master?

A. Forty years.

Q. Forty years. All right, proceed.

Direct Examination

By Mr. McKeon:

Q. What part of that time has been in the tug-boat business, Captain? A. About 35 years.

Q. I show you an amendment to the libel——

The Court: I think you can enter into a [177] stipulation.

Mr. Morse: Stipulate, if you say, Mr. McKeon, those are the members of the crew, I will accept it.

Mr. McKeon: All right.

The Court: All right.

Mr. McKeon: They are.

Q. Captain, we are trying to get you back to Seattle. A. Thank you.

Q. Will you tell the Court when you started—you were the master of the Hercules?

A. Yes, sir.

Q. Will you tell the Court when you started from Seattle?

The Court: And what happened after you started.

(Testimony of George Olaf Flagstad.)

Mr. McKeon: And what happened after that.

A. Left Seattle and, oh, about 1:30, 1:40 in the morning of the 17th, I think it was, and there was a storm, a southeaster—

Q. Speak up.

A. And in the Straits going down, there was a good strong southeaster, but coming out of the Cape it kind of lulled down some.

Q. The Cape—you mean Cape Flattery?

A. Yes, sir, and got down to, off Grays Harbor about, I think it was about 11:30 that night, and we were looking for the Fox and the Herald.

Q. Searching around for them?

A. Yes, and we cruised around there for about an hour or half [178] hour or so, because our report in Seattle said she was supposed to be about four miles north of Grays Harbor. And then we finally contacted the Sea Fox.

The Court: Where did you contact her?

The Witness: Cruising around off Grays Harbor.

The Court: About what time, approximately?

The Witness: Oh, approximately 1:00 o'clock in the morning.

The Court: 1:00 o'clock, that would be the 18th?

The Witness: Yes, sir.

The Court: What happened then?

The Witness: Well, he had told us, as near as I can remember, he was off Willapa, that is shoal water.

The Court: In shoal water?

(Testimony of George Olaf Flagstad.)

Mr. Morse: May I interrupt? We have a chart of this area, if you would like to see it, Judge.

The Court: Wait for his testimony.

Mr. Morse: All right.

The Court: And then we can check up on the details, if you wish.

The Witness: We proceeded down there and we looked for them, waiting for an anchor.

The Court: How far up was she?

The Witness: Oh, I should say about 10 or 12 miles offshore, somewhere around in there.

Q. You finally came up during the night? [179]

A. Yes, sir.

Q. What was that, the night of the——

A. That was the morning of the—we got down to him about 3:00 o'clock in the morning, somewhere around there, I don't remember.

Q. What date is that?

A. Morning of the 18th.

Q. On the 18th, and did you speak to the Herald upon arrival in the morning, early morning of the 18th?

A. Yes, we intended to give them a wire, because the weather wasn't very bad. We had a westerly swell, kind of a southeast chop, but suggested we wait until daylight because they had no—hadn't any lights, only flashlights, or something, I guess.

Q. Who suggested?

A. I don't know, somebody.

Q. Somebody on the Herald?

A. On the Herald, yes, sir.

(Testimony of George Olaf Flagstad.)

The Court: All right, what happened? Tell us.

Q. (By Mr. McKeon): Tell us the story.

A. Then we cruised around there until daylight.

Q. What did you do?

A. Daylight came, then we went over on this other side, tried to get the wire up, up to the tug, but we had to straighten and pull away; we tried twice, but almost got into the Sea Fox hawser and also into the anchor chain of the ship. Did [180] get a hand on to us a second time, but we were so close up we had to drop everything and get out of there. So I went around the stern and on the lee side and we got a wire up there to them on that side on the—but you see, we didn't want to put the wire on the same side as the Fox had his manila hawser secured. That wire would chew his hawser, that is why we went on the weather side first.

The Court: All right. What happened?

The Witness: We had to go and put it on the same side as the Sea Fox had his hawser up.

Q. (By Mr. McKeon): At that time how were the swells and sea?

A. She was increasing all the time.

Q. Increasing?

A. Yes, sir, getting a stiff southeaster then and kind of a ground swell.

Q. Approximately how long from the time you started to get your line aboard the Herald that morning of the 18th did it take before you had your line secured?

(Testimony of George Olaf Flagstad.)

A. Well, I should judge about an hour and a half.

Q. And after you had your line secured, what time did she get under way with the Herald?

A. After 10:00 o'clock some time, I think it was, because by then they couldn't let go the anchor chain on the ship, so we stayed there and in the meantime got in irons and took about an hour, took almost an hour, I think it was, before we got [181] out.

Q. What was the effect of your tug getting in irons?

A. The wind caught her and the sea kept washing down on us all the time, went broadside into it.

Q. In that situation with the tug in irons, is the tug practically helpless?

A. Yes, it was to a certain extent, as long as the ship couldn't let go of the anchor.

Q. Was there in that experience that you had, was there a risk of—a real risk of danger of a collision between you and the Fox or the Herald?

A. Well, it could have been.

Q. I am asking you if there was a danger of that?

A. Well, there was to a certain extent.

The Court: In what respect?

The Witness: If the wind had kept on coming up more, we naturally would drift alongside wrong end to (witness slapping hands).

The Court: We are getting a record on you. The

(Testimony of George Olaf Flagstad.)

shorthand reporter is taking down every word you say. All right.

The Witness: I am sorry.

Q. (By Mr. McKeon): Then after you got under way, you had your steel hawser made fast to the Herald? A. Yes, sir.

Q. And the Sea Fox had a twelve-inch manila made fast to the Herald? [182]

A. Yes, sir.

Q. Were either one of those lines made fast to an anchor chain on the Herald? A. No, sir.

Q. They were on the top side of the Herald?

A. On the deck somewhere.

Q. And your hawser wire was around your drum? A. Yes, sir.

Q. And the Sea Fox had the manila secured in some manner to the Herald from her drum?

A. Yes, sir.

Q. Now, as you went up the coast with the Herald in tow, did you encounter any weather?

A. Yes.

Q. Or seas?

A. It kept increasing all day.

The Court: The 18th or 19th?

The Witness: This was the 18th.

Q. (By Mr. McKeon): 18th, your Honor, and during the evening of the 18th, would you examine about what the blow was?

A. Oh, I know we had slowed down off Destruction Island, of course, starting to run on the line,

(Testimony of George Olaf Flagstad.)

and I should judge she was blowing at between 60 and 70.

Mr. Morse: 60 or 70 miles an hour?

The Witness: Yes, sir. [183]

Q. (By Mr. McKeon): Bearing that in mind, Captain, and going back to the time the Herald was at anchor with one anchor down, do you think if she had remained there at anchor with one anchor down that she would have been able to weather that blow?

A. Pretty hard to tell, but I have my doubts.

The Court: You expect to go back to Seattle tonight?

The Witness: Yes, sir.

The Court: Got reservations?

The Witness: Not yet. I wasn't sure, so I didn't.

The Court: Bring your tug down with you?

The Witness: No, going by plane.

The Court: Every one of these sailors, it seems everybody goes by plane now.

The Witness: Well, they want us down in a hurry and they hurried it up.

The Court: Well, we will hurry you back. That is all from this witness?

Mr. McKeon: No, your Honor.

Q. Captain, assuming you had the Herald of the Morning in tow south of the Columbia River?

A. Yes.

Q. And 25 or 30 miles offshore with a wind force varying from 8 to 10, or a strong gale blow-

(Testimony of George Olaf Flagstad.)

ing, would you have attempted to take that tow over the Columbia River bar?

A. No, sir. [184]

Q. It would not have been good judgment to have tried it, would it? A. No.

Q. The best thing to do is to head out to sea under those circumstances?

A. Yes, that is what I would have done.

Mr. McKeon: I think that is all.

Cross-Examination

By Mr. Morse:

Q. Captain, do you keep a log on the Hercules?

A. Yes, sir.

Q. Do you have it here?

Mr. McKeon: Might I say in that connection, Mr. Morse, it is a carbon copy of the original, I am informed.

The Witness: That is the original copy.

Mr. McKeon: Well, I have asked these gentlemen to search. The head of the tugboat company denied——

The Court: How do you know if that is the original?

The Witness: That is my writing on there.

Mr. McKeon: I want to inform the Court, if I may, of the fact that I do not have the original of which this is a carbon copy. I have strenuously tried to get it.

The Court: Subject to correction or further search, why, let it go in for what it is worth at this time.

(Testimony of George Olaf Flagstad.)

Mr. Morse: I am willing to accept this in lieu of the original. [185]

The Court: Let it be admitted and marked.

Mr. Morse: This is five sheets. We ask it to be marked as one exhibit.

The Clerk: For identification?

Mr. Morse: For identification.

The Clerk: Respondent's Exhibit B.

(Whereupon the log above referred to was marked Respondent's Exhibit B for identification.)

Q. (By Mr. Morse): Captain, did you note in your log the wind force and position from time to time?

A. No, sir, I didn't write by a scale. We had it "easterly" or from whatever direction it come from.

Q. After you got outside of Cape Hatteras coming down the coast, what——

The Witness: Cape Flattery.

Q. I am sorry. I am 'way afield. Flattery. What was your wind and force?

A. South and southeast, increasing. It wasn't blowing so very hard.

Q. And it was moderate coming down the coast?

A. Yes, sir.

Q. And when you got to the vicinity of the Herald of the Morning, you remained in the vicinity until daylight?

A. Well, I got in front of Grays Harbor and

(Testimony of George Olaf Flagstad.)

she was what I call a kind of a moderate to fresh southeast. Then we didn't [186] pay much attention to the weather.

Q. It didn't bother you very much?

A. No—well, bothered us so we got wet if you go outside and run around, but we never pay no attention to that.

Q. You didn't try to put your line aboard the Herald until the morning of the 18th?

A. That's right, sir.

Q. Is it a fair statement to say that at that time the weather was still moderate? A. Yes.

Q. That during that day around noontime of that day you started up north towing the Herald of the Morning?

A. About 10:00, 10:30, somewhere around there, I think it was.

Q. Proceeded up——

A. But she was breezing up as soon as daylight came, she started, the wind started to breeze up again.

Q. What would you say is a fair statement of the wind force from the time you say you started your trip up there?

A. Put the wire on, you mean?

Q. Yes. A. I should judge about 30.

Q. Thirty miles an hour?

A. Yes, thirty, maybe 35.

Q. What would that be on the Beaufort scale?

A. 5 or 6, I guess. Of course, I wouldn't say for

(Testimony of George Olaf Flagstad.)

sure, I am [187] just guessing. I have no way of measuring it.

Q. What was the maximum wind velocity from the time you left the anchorage until you got inside Cape Flattery? A. On the return trip?

Q. Yes, sir.

A. I suppose—I don't know—between 60 and 70, and the scale, I don't know—that would be about 12, I suppose.

Q. You think it got up——

A. 11 or 12, somewhere around there.

Q. You think it got up to a wind force of 11 or 12, Captain?

The Court: He doesn't know, he says.

Mr. McKeon: He didn't know, 11 or 12, I guess that is about 11 or 12.

Mr. Morse: Yes.

The Court: Measure it in miles. I will be able to compare it better that way.

Mr. McKeon: On the tugboats, your Honor, they talk in miles an hour, not the native lingo.

The Court: About how many miles per hour?

The Witness: The Coast Guard wired up off Destruction Island, said it was blowing 65 miles an hour.

Mr. Morse: We have the depositions of the Coast Guard to verify that statement.

The Witness: Yes, sir. You see, we got it over the radio from the Coast Guard, because we slowed down—— [188]

(Testimony of George Olaf Flagstad.)

The Court: Gets it from the radio, from the Coast Guard, he said.

Q. (By Mr. Morse): Captain, is November a month when you might normally expect storms in that area?

A. Well, almost any month. It seems, of course, they come when you least expect them.

Q. It is——

A. November is not a very good month, no.

Q. As I recall, you said when you came up to the Herald at anchor she was from 10 or 12 miles offshore?

A. Yes, that is what I figured she was. I didn't take any bearings to verify it, or anything, but I figured——

Q. That is your approximation? A. Yes.

Mr. Morse: I have no further questions.

Redirect Examination

By Mr. McKeon:

Q. Captain, in maneuvering around in water such as you were, there is always present the danger of the line fouling?

A. Oh, always is in a case like that.

Q. Have to guard against that to the best of your ability, too? A. Yes, sir.

Mr. McKeon: I think that is all.

The Court: Do you supervise the other two? Are they flying with you, too? [189]

The Witness: Pardon me?

The Court: Are they going back to Seattle?

(Testimony of George Olaf Flagstad.)

The Witness: We all flew down together, the two of them and myself.

The Court: You are supervising the group?

The Witness: No, we are all together.

The Court: Step down.

The Witness: Thank you.

VERNOL M. CRAIG

called as a witness on behalf of the libelants; sworn.

The Court: Your full name, please?

A. Vernol Marvin Craig.

Q. What is your business or occupation?

A. Towboat business, sir.

Q. And in what capacity?

A. I'm master of one of the tugs of the Puget Sound Tug & Barge Company.

Q. How long have you been a master of tugs?

A. That particular tug, five years.

Direct Examination

By Mr. McKeon:

Q. And you have had considerable Navy experience, have you not?

A. Yes, sir, since 1924.

Q. Any tugboat experience in the Navy? [190]

A. Since 1936.

Q. And you were the mate on the Hercules at the time you went and picked up the Herald of the Morning and towed her in?

A. Yes, sir.

(Testimony of Vernol M. Craig.)

Q. You have heard your captain's testimony, did you, as he related it on the stand?

A. Yes, sir.

Q. Will you tell us after your arrival in the vicinity of the Herald of the Morning and the Sea Fox just what you did, what your tug went through and what your experience was?

The Court: Approximately what time did you reach there?

The Witness: Approximately 3:15 in the morning of the 18th.

The Court: What did you see at that time and what happened?

The Witness: There were—the ship was anchored with one anchor. The Sea Fox had a manila hawser aboard her and was pulling slowly. There was a swell running, a slight breeze. We intended to give the ship our wire upon our arrival, but were requested to wait until daylight, due to the fact that they had no lights aboard ship, it was hazardous for the men to work in the darkness.

At daylight, approximately around 8:00 o'clock we made our first attempt on the weather side to get our wire aboard. Two attempts were made and failed to do it, due to the condition [191] of the sea and the proximity of the ship's anchor chain and the manila hawser from the Sea Fox. We had to change our tactics and go around to the lee side, or starboard side. The attempt to get our wire up was finally successful, but we had asked them to take our pennants from the wire after they had it aboard

(Testimony of Vernol M. Craig.)

and make some figure eights around their bitts on deck and then lash the wire so that it would not slip, but instead of doing that, the wire in the end of the pennant was shackled into a pad eye near the bow of the ship.

Upon the crew on board passing the word down that the wire was secured, the mate also stated to take it easy, that the wire was just shackled into a pad eye on deck.

Our men at times during the operation of getting our tow line aboard, were working in water which had come over the stern of the boat. One man was nearly washed overboard.

I believe that is all I can relate right now.

The Court: What followed?

The Witness: Upon being notified that our wire was secure, we asked the ship to let go their anchor chain. They endeavored to do so, but could not due to the fact the——

Mr. Morse: That was their port anchor, Captain?

The Witness: Port anchor is right, yes. Their chain was jammed, the bitter end, in the chain locker. Consequently they had to ask the Coast Guard cutter Balsam for an acetylene cutting equipment. It was approximately an hour from the [192] time our wire was fast until the anchor chain was finally let go and we proceeded on.

During the course of the day on the way back towards Seattle, the wind kept increasing along with the seas and approximately off Destruction Island we had to slow our speed to relieve the

(Testimony of Vernol M. Craig.)

strain on the wire. In the meantime, the ship was shearing from side to side and the rudder of the ship was lashed over hard left, which would make the ship ride off to one side a great deal. Along about evening we received word from the Coast Guard Balsam that the wind was blowing 65 miles an hour. Upon rounding Cape Flattery and entering the Straits of Juan de Fuca, the weather began to moderate.

The Court: That would be the 18th?

The Witness: That would be the 19th.

Q. (By Mr. McKeon): Tell us what time you got in and put that ship alongside. If you wish to refresh your recollection from the log, you may.

A. May I have the question again, please.

Q. What time did you put the vessel in safety at Everett on the night of the 19th?

A. 9:45 the ship was tied up in the dock.

Q. At 9:45 that night? A. That night.

Q. The 19th? A. The 19th. [193]

Q. You left Seattle shortly after midnight on the 17th? A. 1:40.

Q. And arrived at the scene on the 18th?

A. The morning of the 18th, 3:15.

Q. And then got back into Everett at 9:45?

A. And the ship was tied up at 9:45.

Q. And then you left there and went to Seattle?

A. Went to Seattle.

Q. When did you arrive at Seattle?

A. Arrived at Seattle at 1:00 o'clock in the morning of the 20th.

Q. While you were maneuvering to get your lines

(Testimony of Vernol M. Craig.)

aboard—strike that. After you got your lines aboard the Herald and the Sea Fox had the manila line holding on to the Herald, did your tug get in irons?

A. Yes, we did.

The Court: Your tug get what?

Mr. McKeon: In irons.

The Court: Yes.

Q. (By Mr. McKeon): And what was the effect of that fact on your tug?

A. Well, we were unable to control or bring her up into the wind at all.

Q. And was the Sea Fox in the same predicament?

A. The Sea Fox was in the same predicament and laying on our [194] port side, yes, sir.

Q. Now, did that create a danger of accident between your two tugs? A. Yes, it did.

Q. Did the presence of the anchor, the port anchor of the Herald and the towing hawser from the Sea Fox to the Herald in any wise increase the hazard to you in attempting to get a line aboard the Herald on the morning you attempted to do so?

A. Yes, it created quite a hazard due to the fact that you had to limit your space of maneuvering, you couldn't go around about close to the ship, you had to go around the stern and come into the ship with the anchor chain and the Sea Fox with his towing line out, had to stay clear of that. The Sea Fox was laying a little bit to the port. Consequently that cut off a great deal of maneuvering space.

Q. Yes. With the acetylene torch sent over from the Balsam, they cut that port anchor chain, that

(Testimony of Vernol M. Craig.)

is, the men on the *Herald* cut the port anchor chain?

A. That is right, yes, sir.

Q. And that permitted the port anchor to remain down at the bottom? A. Yes, sir.

Q. And did they cut that chain high up near the chock, or well down?

A. The chain was cut somewhere on deck. We couldn't observe [195] where it was.

Q. Then that let it run up? A. Yes.

Mr. McKeon: I think that is all.

Cross-Examination

By Mr. Morse:

Q. Captain, when the *Herald* of the Morning was adrift and had you come up at that time, would you have asked the *Herald* of the Morning to let go its port anchor so that you could put a wire to the port anchor chain; she would then not have any anchor at all?

A. I wouldn't have asked them to use their remaining anchor, no. I would have asked if they had any chain available.

Q. I understand. Other than the——

A. The full anchor and chain, yes.

Q. So it is clear in my mind, it was kind of necessary that they keep their one anchor and chain available in case they did drift into shore?

A. Yes.

Q. Now, Captain, you said that the rudder of the *Herald* appeared to be lashed hard left?

A. That's right, yes.

Q. Did you go aboard to ascertain if it was

(Testimony of Vernol M. Craig.)

lashed hard left? A. Pardon?

Q. Did you go aboard at any time to ascertain if it was lashed hard left? [196]

A. No, I did not. I was just merely taking some statements of others that upon our arrival in Everett we lashed up alongside the ship and were trying to compensate with the ship; we were unable to steer it due to the fact that the rudder was hard left. I—we notified the pilot to that effect and he took different measures.

Q. When you first started off from the anchorage, was the rudder in hard left position?

A. Yes.

Q. Did you communicate with the Herald of the Morning about that fact? A. No, we didn't.

Q. How many hours prior to the time when the Herald of the Morning was made secure at the dock in Everett had the weather moderated? In other words, as soon as you got in the Straits of Juan de Fuca the weather moderated materially, didn't it?

A. It moderated, yes. We still had considerable swell until we were down near the port of Los Angeles.

Q. What wind force would you say, Captain, was there when you were outside?

Mr. McKeon: You mean with the tow?

A. Which time?

Q. (By Mr. Morse): When you and the Sea Fox were towing.

A. The maximum wind, I would say, between 60 and 70 miles an hour. [197]

(Testimony of Vernol M. Craig.)

Q. What would that be on the wind scale, Beaufort? A. 10 or 11.

Q. That is your best estimate?

A. Possibly more. That is guesswork on the Beaufort scale.

Q. What was the wind force at the time you were putting your line to the Herald of the Morning? A. I would say between 30 and 40.

Q. And what would that be on the Beaufort scale? A. About 6.

Q. 30 to 40. How would you describe it in descriptive words comparable to the Beaufort scale? You also use a light breeze, or heavy gale, something of that sort. How would you describe that?

A. A heavy gale.

Q. On the morning when you were making your line secure? A. Yes.

Q. It was a heavy gale at that time?

A. The wind was blowing up to a heavy gale, yes.

Q. During the time that you were putting your line aboard, what was the wind?

A. During the time the wind was blowing 30 miles an hour, I would say.

Q. You don't care to describe it in any other nautical phrase?

A. Well, if you want the force, I would say force 5. [198]

Q. From which bow of the Herald did the twelve inch hawser—— A. Starboard bow.

(Testimony of Vernel M. Craig.)

Q. So that you had originally intended to have your wire lead from the port bow?

A. That is right.

Q. And the Sea Fox, when the Herald was at anchor, the Sea Fox, was somewhat off the port bow, wasn't she? A. Yes.

Q. Ultimately did the wire and the hawser lead through the same chock? A. Yes.

Q. Both from the lead bow, weren't they?

A. From the starboard.

Q. That was the lead bow, wasn't it?

A. Yes.

Q. Maneuvering tugs is rather hazardous at all times, isn't it, Captain, in the vicinity of large ships? A. Yes.

Q. Did you take any green water aboard while you were maneuvering, putting your line aboard?

A. We did on the weather side or port side of the vessel; we took green water aboard.

Mr. Morse: No further questions.

Mr. McKeon: That is all, Captain. [199]

Mr. McKeon: While Mr. Sprague is here, if I may address him where he is sitting, your Honor——

Q. Captain, did you notice the condition of the rudder of the Herald at any time?

A. No, I did not.

The Court: What is that?

Mr. McKeon: He did not notice the condition of the rudder on the Herald at any time.

The Court: Oh.

(Testimony of Vernol M. Craig.)

Q. (By Mr. McKeon): Secondly, Captain Sprague, please tell us whether or not you were led to believe by your conversation with the Herald whether she had any available anchor.

A. No, I assumed from what she told me they had no anchor chain aboard the ship at all.

Q. (By Mr. McKeon): How about the anchor? She had no anchor chain and she had no anchor?

A. I saw the anchor.

Q. You saw the anchor?

A. From what you told me, I assumed that they had no chain aboard.

Mr. McKeon: That is all.

The Court: Any further questions?

Mr. Morse: No.

The Court: Does that take care of all your witnesses from Seattle and way points? [200]

Mr. McKeon: Pardon me?

The Court: Does that take care of all your witnesses?

Mr. McKeon: That is all the Seattle witnesses, your Honor.

The Court: They are all anxious to get home to their families.

Mr. McKeon: May I ask Captain Flagstad about the rudder?

Q. Did you notice the condition of the rudder of the Herald, the position of it?

Captain Flagstad: No, I did not. I noticed she was shearing to port all the time.

Mr. McKeon: Well, when you got into Everett,

(Testimony of Vernel M. Craig.)

did you have a look to see whether or not that rudder was hard over?

Captain Flagstad: I thought something was funny. That is the reason I asked Craig if he couldn't stay alongside her and make headway on her.

Q. (By Mr. McKeon): Did you look at the rudder after you got her into the dock?

Captain Flagstad: No, glad to get away from it all.

Mr. Morse: I think the only evidence in the record so far is the testimony——

The Court: Glad to get away from it all.

Mr. Morse: ——is the fact the testimony, one witness said that when he saw her at anchor the rudder was weaving back and forth. [201]

Mr. McKeon: Yes, I think it got loose somewhere in this weather.

The Court: Is that all?

Mr. McKeon: Your Honor has been very considerate of us and of the witnesses.

The Court: How many witnesses do you expect to have?

Mr. McKeon: Two, your Honor.

The Court: Tomorrow we have about five or six judgments and settlement of findings. If it goes over to 2:00, will that be sufficient time?

Mr. Morse: Do the best we can.

The Court: Better go over to Monday then, if you wish.

(Testimony of Vernol M. Craig.)

Mr. McKeon: I think we better try to finish tomorrow.

Mr. Morse: I prefer to start tomorrow at 2:00.

The Court: Very well. 2:00 o'clock.

Mr. McKeon: And let us try to finish it.

Mr. Morse: Have you concluded your case?

Mr. McKeon: No, I will conclude in the morning.

The Clerk: 2:00 o'clock tomorrow afternoon.

(Thereupon an adjournment was taken to tomorrow, Friday, January 19, 1951, at 2:00 o'clock p.m.) [202]

Monday, January 22, 1951, at 10 o'Clock A.M.

The Clerk: Puget Sound Tug & Barge Company, v. Waterman Steamship Corporation and similar case on trial.

Mr. McKeon: Ready.

Mr. Morse: Ready.

At your request, Mr. McKeon, I am handing you the insurance policy on the Herald of the Morning on the voyage in question. Now, we don't think it has anything to do with this case at all.

Mr. McKeon: If the Court please, I have urged that the respondent in this matter, pursuant to an arrangement between all parties, an arrangement to have the insurance on this vessel, the Herald of the Morning, during this voyage, or during the period of the towage, inure to the benefit of the tug and that the ship owners actually paid an additional premium to the underwriters for that ad-

(Testimony of Vernel M. Craig.)

ditional protection. Mr. Morse has been contending otherwise and in that connection I wish to introduce the policy of insurance and an exchange of telegrams between certain of the parties relating to the insurance and the cost of the insurance.

The policy would take the libelant's next exhibit number, and I assume that these telegrams can go in.

Mr. Morse: No objection at all.

Mr. McKeon: And there are several telegrams, two, three [203] four, five, six, telegrams relating to this matter of, in part relating to this matter of insurance, from which I will contend, your Honor, that this tug towing the Herald in the morning was protected by this hull policy of insurance for which the owner paid an additional premium.

The telegrams are dated October 27—these are all 1948, your Honor—signed by Mr. Williams of the Maritime Commission; a telegram of October 28 from Waterman Steamship Corporation to Mr. Williams, the secretary of the Maritime Commission, Waterman being the owner of the vessel; a telegram of October 28, 1948, from Waterman Steamship Corporation to Pacific Car Foundry Co., the Everett Shipbuilding and Drydock Company that was doing the work on the ship, and whose yard the vessel was being towed; a telegram of October 28, 1948, to Waterman from Mr. LeBlanc, the general manager of the Everett Shipyard; a telegram of October 29 from Mr. Williams of the Maritime Commission to Waterman Steamship Corporation; and the telegram of October 29 to this Everett Ship-

(Testimony of Vernol M. Craig.)

yard, Mr. LeBlanc, sent by Sudden & Christenson, Demarest, Sudden & Christenson, Incorporated. I will ask that that group take one exhibit number.

The Court: They may be admitted and marked.

The Clerk: Libelant's Exhibits 5 and 6 admitted and filed in evidence.

LIBELANT'S EXHIBIT No. 6

(Copy)

BMA056 Long GOVT PD WUX Birmingham Ala
27 1201 P

1948 Oct 27 PM 12 51

Waterman Steamship Corp
Mobile

Commission by action of October 26, 1948, approved as allowances to be made against published sales price, on transfer of title for use Herald of the Morning to your company (1) \$60,606 for dry-docking and condition survey: (2) \$35,000 for naval architect's fee. (3) Pacific Car and Foundry Company's part B bid dated September 22, 1948, submitted in response to invitation TDR-218 in the amount of \$596,074 for reconversion. (4) Expenses incident thereto estimated at \$25,184 provided you agree to the following. (A) To award the work to Pacific Car and Foundry Company D/B/A Everett Pacific Shipbuilding and Drydock Company in accordance with their part B bid. (B) To permit inspection of the reconversion and drydock work under (A) by the Commission's representatives. (C)

Libelant's Exhibit No. 6—(Continued)

Confirmation is obtained from hull and machinery underwriters that Pacific Car and Foundry is named as co-insured during transfer of vessel and coverage is obtained prior to movement. (D) To submit within six (6) months proper evidence that the expenditures covering work for allowances have been made for that purpose and that accounts and records of your company and shipyard performing work shall be available for audit as required by the Commission. (D) That in the event the amount expended for work for which allowances 1, 3 and 4 are made is less than amount of allowance set forth herein your company will pay to Commission an amount equal to the difference.

Please notify Commission of acceptance of allowances and all conditions. After proper acceptance has been received title for vessel will be transferred to you at which time you may proceed with work.

A. J. WILLIAMS,

USMC, Washington.

copied for

Mr. Roberts

Mr. Garner

Mr. Slaton

Mr. Waller

Mr. Murray

Capt. Reed

Mr. Ingram

Mr. Foster

Mr. Stoudenmire

[Stamped]: G. F. Oct. 28, 1948.

Libelant's Exhibit No. 6—(Continued)

October 28, 1948

Mr. A. J. Williams, Secretary,
United States Maritime Commission,
Washington, D. C.

Retel October 27th we accept your proposal for purchase of SS Herald of the Morning and agree to all terms and conditions as set out in your telegram. Vessel now located San Francisco and it is our understanding that necessary for contractor to make all arrangements for towing vessel to Everett and assume all expense in connection with preparation and towing vessel to their plant. It is our understanding that it is necessary for us to cover insurance for your account with understanding that Pacific Car & Foundry Company is named as co-insurer during the transfer of vessel and coverage is obtained prior to movement.

WATERMAN STEAMSHIP
CORPORATION.

NN/L

Chg. Waterman SS Corp.

Time—10:30 A.M.

cc to

Mr. Roberts, Mr. Garner, Mr. Slaton, Mr. Waller,
Mr. Murray, Capt. Reed, Mr. Ingram, Mr. Foster,
Mr. Stoudenmire.

Libelant's Exhibit No. 6—(Continued)

October 28, 1948.

Pacific Car & Foundry Co.,
Everett-Pacific Shipbuilding & Drydock Co.,
Everett, Washington.

You are hereby awarded contract to repair SS Herald of the Morning in accordance with your bid part "B" dated September 22, 1948, submitted in response to invitation TDR-218 in the amount of \$596,074.00 for reconversion with understanding that you permit inspection of reconversion drydock work under "A" by Commission's representative and that you permit the Maritime Commission to audit your books as they may require. You are authorized to immediately take delivery of the vessel at San Francisco, California, and tow her at your expense to your plant it being understood that all expense involved in preparing vessel for tow be for your account and all towage arrangements must be approved by the United States Salvage Association surveyors and our representatives. Time to commence at 8:00 a.m., November 1st, 1948. Please telegraph your acceptance.

WATERMAN STEAMSHIP
CORPORATION.

CC to

Messrs. Roberts, Garner, Slaton, Waller, Murray,
Ingram, Foster, Stoudenmire, Capt. Reed.

NN/L

Chg. Waterman SS Corp.

Time—10:30 A.M.

Libelant's Exhibit No. 6—(Continued)

(Copy of telegram)

October 28, 1948.

Waterman Steamship Corporation,
Merchants National Bank Building,
Mobile, Alabama.

Reurtel today we accept award contract recon-
vert Herald of the Morning in accordance our bid
part "B" dated 22 September, 1948, in amount
\$596,074.00 in response invitation TDR-208 with
understanding Commission's representative will be
permitted inspect reconversion drydock work under
part "A" of item 105 of specifications and Maritime
Commission may audit books in accordance Article
36 of pro forma contract it is understood official
starting time is 8:00 a.m., November 1, 1948, that
we are authorized to immediately take delivery of
vessel, that expense of preparing for tug and tow-
ing for our account except insurance which for
your account and that towing arrangements must
be approved U.S. Salvage Association Surveyors
and your representatives.

R. LeBLANC,
General Manager, Everett-Pacific Shipbuilding &
Drydock, Everett, Washington.

Originals: Capt. Nicolson.

Copied for: Mr. Roberts, Mr. Garner, Mr. Slaton,
Mr. Waller, Mr. Murray, Capt. Reed, Mr. Ingram,
Mr. Foster, Mr. Stoudenmire.

Libelant's Exhibit No. 6—(Continued)

(Copy)

Western Union

1948 Oct 29 PM 6 21

AA83

A. BMB730 NLPD Govt WUX Birmingham Ala 29

Waterman Steamship Corp.,
Mobile, Ala.

Reurtel October 28 on purchase of USS Herald of the Morning your understanding that it is necessary for you to cover insurance during movement of vessel by Pacific Car and Foundry Company, who is to be named as co-insured, is correct. Allowance for your expenses will be revised to include insurance costs.

A. J. WILLIAMS,
USMC, Washington.

Copied for Mr. Waller

Mr. Foster

Mr. Hirs

Orig. to Capt. Nicolson

Western Union

(Copy)

WU 1 DL PD SFranerisco Calif Oct 29 (#\$A 1948
Robert LeBlanc—Everett Pacific Shipbuilding Co.

Herald of the Morning we agreeable act your agent in accepting this vessel Oakland prepare for tow and dispatch vessel toward your yard Everett

Libelant's Exhibit No. 6—(Continued)

Trust fee \$500.00 satisfactory. Understand your preference tow boat Company Foss Launch and Tug please accomplish lump sum towage agreement with Foss mail us two copies soonest this necessary satisfy salvage association and enable owner arrange towage risk insurance we believe standard form towage contract is with release of tug from any and all liability. Our port staff working closely with your George Simpson. We hopeful arrangements for crew under terms no less favorable than Young America Tow. We will also procure Coast Guard temporary certificate American Bureau of Sea Worthy Certificate and approval of salvage association of tug equipment and method of tow. Every effort will be made to dispatch from San Francisco noon November 5th will keep you advised—Demarest—Sudden and Christenson Inc.

[Endorsed]: Filed January 22, 1951.

Mr. McKeon: If the Court please, in answer to one of the interrogatories, Interrogatory 7 of the interrogatories [204] attached to the answer to the cross-libel, the question was: "Is it not a fact that a surveyor to the Board of Marine Underwriters of San Francisco and the United States Salvage Association, for and on behalf of the underwriters of the Herald of the Morning, passed up and approved as satisfactory the tug and tow for the voyage mentioned?"

The answer to that is, "Yes, but only as provided in said survey report."

To complete that answer I now want to introduce in evidence the survey report referred to.

Mr. Morse: No objection. We were going to offer it ourselves.

The Court: It may be admitted and marked.

The Clerk: Libelant's Exhibit 7 admitted and filed in evidence.

(Whereupon the document above referred to was received in evidence and marked Libelant's Exhibit No. 7.)

LIBELANT'S EXHIBIT No. 7

United States Salvage Association, Inc.

Head Office

99 John Street

New York

Case No. C-5477

Agency at: San Francisco, Calif.

November 4, 1948.

Fitness to proceed as flat tow from Oakland,
California, to Everett, Washington.

November 4, 1948

S.S. "Herald of the Morning"

Please Read Conditions

The services of this Association are offered and this report or certificate is issued on the following conditions:

(1) That while the officers and the Board of Directors of the United States Salvage Association, Inc., have used their best endeavors to select competent surveyors and to insure that the functions of the association are properly executed, neither the officers nor the Directors nor the Association are under any circumstances whatever to be held responsible for any error of judgment, default, or negligence of any surveyor or other employee or representative of the Association, or for any inaccuracy, omission, misrepresentation or misstatement in any report or certificate.

(2) That under no circumstances shall this report or certificate be used in connection with the issuance, purchase, sale or pledge of any security or securities, or in connection with the purchase, sale, mortgage, pledge, freighting, letting, hiring or charter of any vessel, cargo, or other property.

The terms of these conditions can be varied only by specific resolution of the Board of Directors, and the use of this report or certificate shall be construed to be an acceptance of the foregoing conditions.

Report of survey made by the undersigned surveyor of the United States Salvage Association, Inc., on November 3, 1948, at the request of the United States Salvage Association, Inc., New York, N. Y., and Sudden and Christenson on the S.S. "Herald of the Morning," C-2 type vessel, formerly a Navy transport and now owned by the Waterman Steamship Company, while lying afloat at

Moore's West Yard, Oakland, California, in order to ascertain and report on the fitness of the vessel to proceed as a flat tow from Oakland, California, to Everett, Washington.

Attending Survey:

Mr. Simpson representing Everett Pacific Shipyard.

Mr. Randall representing Sudden and Christenson.

The vessel's tanks are all empty, and manhole covers bolted down.

Weather hatches and tarpaulins are in place and locking bars secured.

All watertight doors in weather deck are closed and dogged.

Cargo booms are nested in the rests and strapped or lashed.

Starboard anchor was removed for towing on starboard cable and anchor secured to steel deck with welded bands and wire lashing.

Windlass brakes are operative but no power on windlass.

Rudder is secured amidships.

The vessel's draft is 8'6" forward and 17'00" aft. Propeller and tailshaft are in place and rigidly secured to framing to keep from turning.

Stern gland was taken up on and does not leak.

Watertight door to shaft alley is closed and dogged.

Ship's side valves are closed tight and hand wheels removed.

Condensers, circulating pumps, evaporators are closed up tight. There is no machinery in engine

room opened up, with the exception of boiler fronts being off. These were all lashed down to keep from moving around.

There is no loose gear in 'tween decks to move around.

Doors to storerooms and quarters were closed and secured except those in use.

Bilges are dry.

An air compressor was placed on deck with air hoses to general service and fire pumps.

CO₂ portable fire extinguishers, tested and certified, October, 1948, are located in troop quarters in 'tween decks.

Chemical fire extinguishers—six (6) off—2½ gallons placed on board handy for the crew.

Navigating kerosene lights were placed aboard, and a supply of flash lights, batteries and bulbs.

There was no litter or oil noted which would constitute a fire hazard.

Crew consists of master, 2 mates, 6 A.B. seamen, 2 engineers, cook and messman.

The towing tug is the "Sea Fox," of the Red Stack Tugboat Co. which previously towed the S.S. "Young America" from Oakland, California, to Everett, Washington.

In the opinion of the undersigned, both tug and tow are fit to proceed on the contemplated voyage, taking advantage as much as possible of favorable weather.

/s/ MURDOCH MURRAY,
Surveyor.

[Endorsed]: Filed January 22, 1951.

Mr. McKeon: I assume, Mr. Morse, it will be stipulated that the Everett Pacific Shipbuilding and Drydock Company, sometimes called Pacific Car & Foundry Company, had contracted to make these repairs to the Herald of the Morning?

Mr. Morse: Yes, and in order to have the whole plan complete, I was going to suggest we offer the contracts, the contract with Everett Pacific, the contract for the purchase of the vessel, and the lump sum towage agreement. [205]

Mr. McKeon: Very good.

Mr. Morse: Then we would have in evidence all of the documents of record. If you wish I will put them in as my exhibits.

Mr. McKeon: All right. It doesn't make any difference.

Mr. Morse: Offer in evidence as Respondent's exhibit next in order contract number MCC 61,004, which is a contract for purchase of a vessel between Waterman and the Maritime Commission.

The Court: It may be admitted and marked.

The Clerk: Respondent's Exhibit C admitted and marked in evidence.

(Whereupon the document above referred to, was received in evidence and marked Respondent's Exhibit C.)

Mr. Morse: I offer in evidence Contract MCC 61,461, which is the contract between three parties there named, the Maritime Commission, Everett Pacific and Waterman Steamship Corporation. This is for the reconversion of the vessel.

The Clerk: Respondent's Exhibit D admitted and filed in evidence.

(Whereupon the document above referred to was received in evidence and marked Respondent's Exhibit D.)

Mr. Morse: A copy of the lump sum towage agreement, which was executed between the ship-owners and merchants and Everett Pacific, dated November 1, 1948. [206]

The Clerk: Respondent's Exhibit E admitted and filed in evidence.

(Whereupon the lump sum towage agreement above referred to was received in evidence and marked Respondent's Exhibit E.)

RESPONDENT'S EXHIBIT E

(Copy)

Lump Sum Towage Agreement

It is hereby agreed between Shipowners & Merchants Towboat Co., Ltd., hereinafter called First Party, and Everett Pacific Shipbuilding & Drydock Co., as owners of the SS "Herald of the Morning," or agents for owners, hereinafter called Second Party, as follows:

1. First Party agrees to furnish the tug "Sea Prince" or "Sea Fox" and use its best efforts to tow the SS "Herald of the Morning" from San Francisco Bay to Everett Bay, Washington. Said towage shall commence about 10 days from the date hereof.

2. First Party shall be paid \$5,750.00, Five Thousand Seven Hundred and Fifty 00/100 dollars plus tax for its service and such sum shall be deemed earned by First Party and payable by Second Party in full upon commencement of towage service even though at any stage of the venture thereafter the towage service be cancelled by Second Party or the tow or tug be lost or disabled or the tow break away or become unfit to continue to destination. An additional \$750.00 per calendar day per tug shall be paid by Second Party for any delay to tug in its performance of the towage service after the tug's arrival ready to commence, whether such delay occurs prior to or after commencement of the towage service, excluding, however, any delay caused by fault or act of First Party or caused by weather conditions after commencement of the towage service. If, after the tug's departure from San Francisco and before commencement of the towage service, such service is cancelled by Second party or is prevented by any other cause beyond First Party's control First Party shall be paid at the rate of \$750.00 per calendar day or fraction thereof per tug from the date of such departure until the time of her return to said port. Payment to First Party of the amounts due it hereunder shall be made in ten days.

3. Second Party shall make up tow and cause it to be in all respects sufficient and fit to make the voyage and withstand the perils to be encountered. First Party shall not be required to make any inspection of tow before commencing the towage serv-

ice. Second Party shall direct and be responsible for the method and position in which tow shall be towed and the determination of time of sailing and shall man, supply and maintain thereon proper navigation lights and towing gear and make tow lines fast thereon and moor or secure tow upon arrival at destination.

4. First Party shall be relieved of any obligation to perform hereunder if prevented or delayed from so doing by strikes, lockouts, or labor disturbances or the loss of or damage to the named tug, and First Party shall not be responsible for loss or damage arising from faults or errors in the navigation or management of tug or tow.

5. The tug may at any time mentioned herein go to the assistance of vessels in distress for the purpose of saving life or property, and in connection therewith call at any port of distress for fuel, supplies, or other necessities, or to land disabled seamen, and time lost by the tug under such circumstances shall not be deducted from the sum payable hereunder, the tow, however, to be left in a position of safety and upon the completion of said assistance, the tug shall return to the tow and resume the towage service.

6. All port charges, assisting towage, and any wharfage chargeable against the tow shall be paid by Second Party.

7. Second Party shall indemnify and hold harmless first Party and said tug against liability to and

claims and demands of the personnel of Second Party aboard the tow or their heirs or personal representatives.

8. By endorsement thereon or otherwise and without any right or subrogation against it, First Party shall be made an additional assured in Second Party's insurance policies covering the tow, including Hull, P. & I. and Cargo, during the towage service, and, if Second Party does not so add First Party as an additional assured or fails to provide for the aforesaid waiver of subrogation or fails to insure said tow, then Second Party agrees to be the insurer thereof for both parties and expressly agrees to assume the risk of loss of or damage to the tow and cargo and any liability of First Party therefor which could be covered by usual and suitable forms of marine insurance policies.

9. This shall not be deemed to be a personal contract of a kind which would preclude First Party of the benefit of the limitation of liability statutes of the United States and nothing herein contained shall be deemed a waiver thereof.

In Witness Whereof, the parties hereto have caused these presents to be executed by their proper representatives thereunto duly authorized this 1st day of November, 1948.

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD.

By /s/ THOMAS B. CROWLEY,
Vice President.

EVERETT PACIFIC SHIPBUILDING & DRY-
DOCK CO. SUDDEN & CHRISTENSON,
INC.,

Agts.

By /s/ R. O. DEMAREST.

[Endorsed]: Filed January 22, 1951.

Mr. McKeon: We rest, your Honor.

Mr. Morse: I will call Captain Sommer, please.

RUDOLPH T. SOMMER

called as a witness on behalf of the Respondents,
heretofore sworn.

The Court: State your full name, please.

A. Rudolph T. Sommer.

The Clerk: Rudolph T. Sommer, heretofore
sworn.

Direct Examination

By Mr. Morse:

Q. Captain Sommer, will you please refer to your log, which is Respondents' Exhibit A for identification. Would you give us the positions of your tug on each of the days after departure from San Francisco?

Mr. McKeon: Well, if they are in the log why not just read them?

Mr. Morse: As we go along from each day, if they are in the log, say so, and if they are in the

(Testimony of Rudolph T. Sommer.)

log I would like to know whether it is a sighted position or whether a dead reckoning position.

A. Dead reckoning. Well, it will be on the 5th, Point [207] Reyes, starting from Point Reyes?

Q. (By Mr. Morse): Yes, sir.

A. Three miles distant, that would be dead reckoning, three miles off.

Q. Yes. A. That was at 5:45 p.m.

Q. You don't need to give the position, just give the date and indicate whether it is dead reckoning or whether a sighted position. A. Yes, sir.

Mr. McKeon: Mr. Morse, we would get along much faster if you would read it.

The Court: If you are familiar with it you might read it into the record.

Mr. Morse: I am not familiar with it, I haven't seen it until it was produced in court.

Mr. McKeon: It is my understanding that the witness has said it is all dead reckoning.

The Witness: Here's a position on the 7th, thirty-eight twenty north, one twenty-three fifty-nine west, that is a new position.

Q. (By Mr. Morse): Is that a sighting, a sighted position? A. Yes.

Q. Did you take a sight on the 7th?

A. Yes. Then on the 8th, it was a noon position, thirty-seven [208] fifty-one north, one twenty-three twenty-six west.

Q. And that is a sight? A. Yes.

The Court: Were they all sights?

The Witness: Some of them are and some of

(Testimony of Rudolph T. Sommer.)

them are not. Here is on the 9th, a noon position, forty-eight forty north, one twenty-three forty-two west.

Q. Again a sighted position?

A. That is a noon position.

Q. Sighted?

A. Yes, sighted. On the 10th, it is a noon position, forty twenty-five north, one twenty-four thirty-four west, a sight. And the 11th, it was forty-one twelve north, one two four fifty-four west. That is a sighted noon position. That is an approximate position.

Q. Now, that was a dead reckoning position?

A. Well, he has got "Prox." I guess it wasn't anything very clear. Approximate position.

The Court: Approximate position.

The Witness: On the 12th, a noon position, forty-one forty-seven north, one two four fifty-two west.

Q. (By Mr. Morse): Sighted?

A. That is a sight. On the 13th, noon position, forty-three forty north, one twenty-four forty-five west.

Q. Sighted, I assume? [209] A. Yes.

The Court: Getting into the storm, now.

The Witness: Yes, we are getting into the storm now.

The Court: The 14th?

Mr. Morse: We haven't the 13th, yet, Judge.

The Witness: Yes, we have had the 13th, you have the 13th.

Mr. Morse: I beg your pardon.

(Testimony of Rudolph T. Sommer.)

The Witness: Here is an approximate position on the 14th, forty-six zero zero north, one twenty-four thirty west.

Q. (By Mr. Morse): That would be dead reckoning?

A. Yes. On the 15th, noon position, forty-five fifty-seven north, one twenty-four twenty-five west. There was no position on the 16th.

Mr. Morse: We were at sea, too, Judge.

The Witness: On the 17th, forty-six forty-two north, one twenty-four twenty-six west. On the 18th, it is forty-six forty-two north, one twenty-four twenty-six west.

Q. (By Mr. Morse): Now, that would have been a sighted position?

A. Yes. On the 19th, forty-eight twelve north, one twenty-two fifty-two west.

Q. Did you personally take those sights, Captain?

A. No, sir, Mr. Reichel.

Q. Did you verify them yourself?

A. Yes, sir. [210]

Q. What did you do to verify them? Did you compute the position yourself?

A. No, I just verified them, checked them over with him.

Q. Did you personally——

A. We had the tables there and we went over it.

Q. Did you personally take sights of the sun to double check on him?

A. No, sir.

Q. Or did you compute his sights to see whether his computations were accurate?

A. No, sir.

(Testimony of Rudolph T. Sommer.)

Q. What watches did you stand when you were—— A. Eight to twelve, as a rule.

Q. You were on the eight to twelve watches, and who was on the twelve to four watch?

A. Twelve to four watch, I will take a look. Twelve to four was Harris, I am pretty sure.

Q. And Captain Reichel would be on the four to eight, then? A. Yes, sir.

Q. You three were the only three deck officers?

A. Yes, sir.

Q. On the 14th—correction. On the 13th when storm warnings were broadcasted, were you in sight of the coast? A. No, sir.

Q. Did you head to sea when you received those broadcasts [211] of storm warnings?

A. Yes, sir.

Q. At the time you received the storm warnings how far off shore were you?

A. Well, I couldn't say offhand, now.

Mr. McKeon: If the Court please, I don't like to interrupt, but all this was gone over on direct and cross before.

The Witness: I couldn't say, now, how far we were off.

Mr. McKeon: Unless the Court wants to hear some more, but I think in the interests of saving time, just going over it again.

Q. (By Mr. Morse): From the time you received the storm warnings, how far offshore was the maximum distance that you thereafter went?

A. Oh, maybe about thirty, forty miles, I should judge. I wouldn't say for sure.

(Testimony of Rudolph T. Sommer.)

Q. You went forty miles offshore?

Mr. McKeon: Thirty to forty.

The Witness: Twenty-five, thirty to forty.

The Court: Thirty to forty?

The Witness: Thirty to forty.

Q. (By Mr. Morse): That was your maximum offshore distance? A. Yes, sir.

Q. And when were you out that maximum offshore distance, which date? [212]

A. The storm come, the biggest storm, we were about thirty-five, forty miles off, I should judge.

Q. Well, the date, what was it when you were thirty-five, forty miles offshore?

A. When the wire parted.

Q. That would be on the early morning of the 16th?

A. Yes, sir, I should judge. I don't remember the date.

Q. Forty or fifty minutes after midnight?

A. Yes, sir.

Q. Does your tug have a listed or licensed radio operator aboard?

A. No, sir, doesn't require it.

Q. All radio-telephones, such as the one you had, does the Customs House require all radio-telephones, the radio communication system, compel you to file the name of your radio operator?

A. Yes, sir, I think so, I am not sure. I wouldn't say for sure; I am not sure.

Q. If you are not sure——

A. I am not sure.

(Testimony of Rudolph T. Sommer.)

Q. Be better not to say. Do you know the cycle on which your radio operates, the band?

A. Two three three oh, I think it is, I am not sure; thirty, forty, somewhere along in there; I am not sure.

Mr. Morse: No further questions. [213]

The Witness: The first mate generally took charge of the radio, I don't know.

Cross-Examination

By Mr. McKeon:

Q. Captain, you testified that you had taken a number of ships, towed a number of ships to sea?

A. Yes.

Q. In '47 and '48? A. Yes, sir.

Q. How many did you say?

A. About seventeen.

Q. Did you take the Young America up with the Sea Fox to Everett Shipyard in 1948?

A. Yes, sir.

Q. Did you take two other similar vessels to the Herald of the Morning up in 1948?

A. Yes, sir.

Mr. McKeon: I think that is all.

Mr. Morse: I didn't ask anything about that on direct examination—cross-examination, but——

Redirect Examination

By Mr. Morse:

Q. Which month did you take the Herald of the Morning? A. Up?

(Testimony of Rudolph T. Sommer.)

Q. Yes, sir. A. Which month? [214]

Q. Which month? A. November.

Q. I beg your pardon, I meant the Young America.

A. Young America, well, I haven't got the date down in my head, I don't remember which month that was. I think it was along in October, I wouldn't say for sure, I don't remember offhand, what date, what month it was.

Q. Which months did you take up these other vessels you referred to?

A. That was, oh, along in the year—oh, that would be in '47 or '48.

Q. Did you take any of them up in the winter months? A. Yes, sir.

Q. Which one?

A. Took one up just before the Herald of the Morning, I think it was, around October—I am not sure right offhand.

Mr. Morse: Well, I ask that the names of the vessels and the times when they were towed be produced for the record, please.

Mr. McKeon: I haven't got them.

Mr. Morse: Well, Captain Sommer has ability to ascertain that information.

Mr. McKeon: But I can get it, what you want is the vessels that he towed up in 1948, and when he did?

Mr. Morse: He referred to 1947, and 1948, serving as [215] Master.

(Testimony of Rudolph T. Sommer.)

Mr. McKeon: All right. This was on the Sea Fox, was it?

The Witness: Yes.

Mr. Morse: No further questions.

Mr. McKeon: That is all, Captain.

The Court: Step down.

Mr. Morse: Mr. McKeon, have you had an opportunity to ascertain the common officers and stock ownership between the Shipowners and Puget Sound?

Mr. McKeon: Well, yes, Mr. Thomas B. Crowley is a vice-president of the Puget Sound Tug and Barge Company, and vice-president of the ship-owners, that is the only common officer.

Mr. Morse: Mr. Crowley, Junior?

Mr. McKeon: Junior.

Mr. Morse: Is there common stock ownership in any respect?

Mr. McKeon: No, ownership consists of an ownership of fifty per cent interest with others in the Drum and Lighterage Co., which in turn has an interest in the Puget Sound Tug and Barge Company.

Mr. Morse: I gather from that that the Shipowners, with others, has a fifty per cent——

Mr. McKeon: Not the Shipowners, just the Crowleys.

Mr. Morse: I see, and of course the Shipowners is owned generally in stock?

Mr. McKeon: Majority being Crowley's. [216]

Mr. Morse: I don't want to accept that without

knowing definitely. But the only joint officer situation is the vice-president of both.

LAWRENCE ERWIN BELFORD

called as a witness on behalf of the respondents, sworn.

The Court: Your full name, please?

A. Lawrence Erwin Belford.

Mr. McKeon: I can't hear you.

The Witness: Lawrence Erwin Belford.

Mr. McKeon: Belford?

The Witness: B-e-l-f-o-r-d.

The Court: What is your business or occupation?

A. At that time I was a marine engineer. Now, I am the superintendent or manager of an office building in Oakland. [217]

The Court: Proceed, counsel.

Direct Examination

By Mr. Morse:

Q. Do you hold any sea-going papers, Mr. Belford?

A. Yes, I have the fifth issue of a chief engineer's license.

Q. For—— A. Unlimited.

Q. Unlimited. All vessels, all oceans?

A. Right.

Q. And how long have you had—that would be for, this would be in excess of 20 years that you have had a license?

(Testimony of Lawrence Erwin Belford.)

A. Expires March, '46. This was issued March, '46, and expires March of this year. It would be 25 years, with a chief's ticket.

Q. Have you served as engineer aboard sea-going vessels?

A. I have never served on anything else.

Q. Well, have you gone to sea? A. Right.

Q. For how many years?

A. Approximately 27 years.

The Court: In what capacity? Just briefly enumerate it.

A. Of course I started as an oiler, then third assistant, second assistant, first assistant and chief engineer.

Q. How long did you act as chief engineer, what period of [218] time? A. About nine years.

Q. About nine years? A. Yes.

The Court: All right. Proceed, counsel.

Q. (By Mr. Morse): You were chief engineer aboard the *Herald of the Morning* on the time when she was being towed between San Francisco and Everett? A. That's right.

Q. Did you personally examine the rudder as you were being towed up the coast?

A. (Nodding the affirmative.)

Q. What——

The Court: Speak so the Reporter will be able to hear you.

The Witness: I did.

Q. (By Mr. Morse): What position was the rudder in? A. Amidship.

(Testimony of Lawrence Erwin Belford.)

Q. And how were you able to ascertain that?

A. By your quadrant in the steering engine room.

Q. Your steering engine room is aft?

A. Aft.

Q. Immediately above the rudder?

A. Right.

Q. And there is an indicator on the quadrant which shows [219] the position of the rudder?

A. There is, right.

Q. And at least up until the storm or the weather of—strike that.

At least up until you broke adrift, did you daily inspect that rudder? A. I did.

Q. Did it remain in that same position?

A. It did.

Q. How many people were aboard the *Herald of the Morning*?

A. Fifteen, to my knowledge, or sixteen.

Mr. Morse: I will offer proof that there were sixteen, if the Court please.

The Court: Fifteen or sixteen, the witness says.

The Witness: That's right, fifteen besides myself; there were sixteen.

Q. (By Mr. Morse): Did you have any trouble between yourself and the tug as she started, after you left San Francisco? Trouble; by that I mean any breakdowns or anything of that character?

A. Yes. Broke down below Point Reyes and the *Sea Prince* towed us into Drake's Bay.

Q. Was the *Herald* following the *Sea Fox* directly aft? A. Right.

(Testimony of Lawrence Erwin Belford.)

Q. Prior to the time it broke down? [220]

A. That's right.

Q. Right after you left Drake's Bay, did you thereafter have trouble? A. No.

Mr. McKeon: I don't hear you.

The Witness: Not until we got up north. I mean—you mean did we break loose immediately, or?—

Q. (By Mr. Morse): Well, when did you next break loose?

A. On up off of Destruction Island.

The Court: What date was that? Fix the date, if you remember it.

A. I would only have to guess. I think it was the 13th. I am not sure.

The Court: That's all right.

Q. (By Mr. Morse): Have you looked at log records or anything to verify your memory as to the date? Have you recently looked at them?

A. Oh, I have looked at them, but these navigation problems, why, they are rather vague to me. I don't—

Q. They are outside your field?

A. The position and so forth, they don't mean anything to me.

Q. Well, describe to the Court the weather conditions on the date when you did break adrift, the second occasion. A. It was bad.

Q. Were you able to fix the degree of the [221] storm? A. No.

Q. Have you experienced weather comparable on any previous occasion? A. Oh, yes.

(Testimony of Lawrence Erwin Belford.)

Q. Have you ever been in that area of the Pacific Ocean on any previous occasion?

A. Yes.

Q. When would that have been?

A. Oh, many times from 1922 until last year and including last year.

Q. By the way, how long have you been working ashore? A. Since January of 1950.

Q. Is the area off the Oregon and the Washington coast considered an area of calm weather, or do they have storms in that area?

A. Well, always have seasonal storms.

Q. In November? Is that a seasonal storm?

A. You can expect normal seasonal storms in November.

Q. Do you recall the occasion after you broke adrift the second time and drifted for part of a day and then you were anchored? Do you recall that occasion? A. Right.

The Court: Will you fix that date?

A. Well, it was on a Tuesday, I think the 14th.

The Court: 14th, all right. [222]

The Witness: 13th or 14th.

The Court: All right.

Q. (By Mr. Morse): It was a Tuesday, as you recall it? A. That's right.

Q. Irrespective of the date, it was a Tuesday?

A. Right.

Q. Did you anticipate that you would go aground when you were anchored there? Did you fear that you would be driven ashore?

(Testimony of Lawrence Erwin Belford.)

A. Well, after we got our anchor out, no.

Q. Had the weather continued——

Mr. McKeon: If the Court please, I suggest that Mr. Morse let the witness testify. I think he is doing a lot of leading.

Mr. Morse: Well, I am doing a lot of leading; it has been fairly common so far in this proceeding.

Q. (By Mr. Morse): What was the weather as you were at anchor?

A. She was blowing pretty good.

Q. Had any Coast Guard vessels endeavored to put a line aboard your vessel prior to your——

A. Yes.

Q. Do you recall which one it was?

A. Well, there were two: The Winona and there was the smaller of the two.

Q. The Balsam, was it? [223]

A. Balsam, that's right.

Q. Where were you on the Herald of the Morning when the Balsam was in the process of putting a line aboard?

A. Well, we were all huddled up on the fo'c'sle deck.

Q. And that would be in the extreme bow of the vessel?

A. That's right, sheltered spots awaiting to take the line and heave it aboard.

Q. How was the Herald of the Morning with reference to the weather? How was she lying?

A. She was on the trough of the sea.

Q. So she would be broadside to the weather?

(Testimony of Lawrence Erwin Belford.)

A. That's right.

Q. What was the position of the Balsam at the time she shot a line across to you?

A. She came up on our lee side.

Q. Where did she go? Did she stay on your lee side or how did she maneuver? Just tell the Court how this transaction occurred.

A. Well, the first time when she was trying to get the line aboard, she remained on the lee side, but couldn't get close enough to us. And then she backed away and remained in the vicinity.

Q. And she came up a second time, did she?

A. Yes.

Q. How did she come up on the second [224] occasion?

A. Same way; up on the lee side of our starboard bow. That would be on our starboard bow, the wind was on our port side.

Q. Did she stay in your lee or was she maneuvering in some other position?

A. No, she remained on the lee side at all times.

Q. Well, was she abaft your beam or how was she?

A. Well,—

Q. With reference to your fore and aft length, that is?

A. Well, about opposite our bow.

Q. And about how far distant?

A. Oh, about—she kept at least a hundred feet away from us, using our Lyle guns to shoot lines over.

Q. Did they try once or more than once to shoot a line across to you?

(Testimony of Lawrence Erwin Belford.)

A. On, quite a few times.

Q. And ultimately they did succeed in getting a messenger line across? A. Eventually.

Q. Then what happened?

A. They put a ten-inch hawser on us.

Q. And how did you draw that hawser across to your vessel?

A. Well, she shot a messenger aboard and the main hawser was attached to the messenger. Well, it was a secondary rope in between, and we pulled that up a hawse pipe and secured it to the [225] bitts.

Q. What means did you have of pulling it across to your vessel, this 10-inch hawser?

A. Well, we got the 10-inch hawser, got that on deck, we attached a block and tackle and pulled with the block and tackle until the blocks were together, and then we secured the hawser and then took another bite on it with the block and tackle and pulled it up that way.

Q. Do you recall whether the Neptune—do you recall the tug Neptune, by the way? A. I do.

Q. Do you recall it endeavoring to get a line to you? A. I do.

Q. Now what position was the tug Neptune located with reference to your vessel and your getting a line across?

A. On one side of us just a little forward of our bow.

Q. The Neptune was a little forward of your bow? A. On the weather side.

(Testimony of Lawrence Erwin Belford.)

Q. And that would have been on the port side?

A. Port side.

Q. How was she headed, by the way?

A. She had her bow facing us.

Q. So that her stern would have been away from the weather or toward the weather?

A. Her stern would be into the weather.

Q. By the way, how was the Balsam headed? Which was her [226] heading with reference to the weather? A. Her bow into the weather.

Q. How did you get a line to the Neptune?

A. Well, we dropped two life preservers over attached to a small line and let it drift out and the Neptune picked it up and attached a rudder to the line that was attached to the life preservers, and we pulled that aboard and then the secondary line, and then their cable.

Q. Did you ever succeed in getting any part of the cable aboard your vessel?

A. Yes, we just had about six or eight, or between five and ten feet on the deck getting ready to attach the hand billy to it, when the sea picked her up and slammed her against our bow and she started pulling away and we had to let go of the line.

Q. How many men of your crew were working up there at the fo'c'sle? A. All of us.

Q. Did you see any other ships in the vicinity after you had broken adrift from—strike that.

A. Yes, the two——

Q. Just a moment, please. Name all the ships

(Testimony of Lawrence Erwin Belford.)

that you recall having seen from the time that the Sea Fox indicated that she was having trouble with her steering engine. Do you recall when she indicated that she was having trouble with [227] her steering engine? A. Yes.

Mr. McKeon: Just a moment. Would you read that last question to me again, please?

Mr. Morse: I mean towing engine, not steering engine. I am sorry.

Q. Did she indicate she had any trouble with her towing engine, the Sea Fox?

A. Not to my knowledge.

Q. All right. Did she ever communicate with you as far as you know, the Sea Fox, to the Herald of the Morning?

A. Well, they communicated with the captain with wig-wags, and I don't understand that mode of communication.

Q. Well, with reference to the time when you broke adrift from the Sea Fox, had any vessels come in your vicinity prior to that time?

A. From the time we broke adrift?

Q. Prior to that time had any vessels come in your vicinity?

A. Well, that I wouldn't know. We were under tow; I wasn't up on deck.

Q. All right. After you had broken adrift, did you recall whether any vessels were in your vicinity?

A. Yes, the two cutters and the navy repair ship.

(Testimony of Lawrence Erwin Belford.)

Q. Was that a small ship?

A. No, that was a large ship. [228]

Q. As big as your vessel? A. Yes.

Q. How long did that navy repair ship remain there?

A. Oh, she was around until after the cutter got a line aboard of us.

Q. Were there any tugs? There was the tug Neptune which you have been referring to?

A. The Neptune.

Q. Were there any other tugs?

A. I was told that another tug——

Mr. McKeon: Well, just a moment.

A. (Continuing): But I didn't see it.

Q. (By Mr. Morse): And then after you were at anchor, did any other tugs come up?

A. Well, the Neptune or the Hercules.

Q. Well, hadn't the Neptune sunk before you were at anchor?

A. No. Yes, we were adrift when the Neptune had its accident. We didn't know that the Neptune had sunk until after we got up at Puget Sound; the pilot came aboard and told us.

Q. I see. Anyway, the Hercules did come up to your vicinity after you were—— A. Yes.

Q. And the Sea Fox was there also?

A. Right.

Q. Tell, us, was the Sea Fox the one that put a line aboard [229] you when you were at anchor, or was it some other vessel?

(Testimony of Lawrence Erwin Belford.)

A. Well, it was the cutter put the line aboard of us and then transferred it to the Fox.

Q. Which cutter was that?

A. Well, that was the larger one of the two.

Q. Do you recall the name?

A. Well, you have the name of the two tugs. I know one was larger than the other. The Balsam, I think, was the small one, or whichever it was. The names, I can't identify as to the individual cutters. But it was the larger, the white one of the two.

Q. How did she maneuver to put the line aboard you at that time?

A. She came up on our starboard bow, headed into the wind, shot the lines across with messengers from her Lyle gun.

Q. And you pulled them across to your vessel just as you have described these previous events?

A. Right.

Q. After departing, after you were at anchor there and departed, did you have any more trouble getting up into Everett? A. None at all.

Q. Did the weather pick up during that balance of the tow?

A. No. If I remember, the weather abated.

Q. Was your power plant in operation on the Herald of the Morning at any time? [230]

A. Everything was disconnected.

Q. She was what you would term a dead ship?

A. Dead ship.

(Testimony of Lawrence Erwin Belford.)

Q. What were your duties aboard the *Herald of the Morning*?

A. There was a gas-driven compressor installed on the deck, air lines extended down into the engine room connected to the bilge and ballast pumps. We checked, sounded the bilges morning and night to make sure of not making water. If they were, it was part of my duty to pump them out, and to assist in any way I could, such as disconnecting lines on the anchor chain when it became necessary and so forth.

Q. Speaking of that, did you have any trouble disconnecting the anchor chain on the starboard chain? The starboard chain is the one by which you were towed?

A. Oh, yes. You see, we have the weight of the chain to contend with. Well, there were connecting links every so often in the chain. I separated those links and then had to get chain fall to take up some slack so you could part the chain and then we could release the stopper and let her go in the water.

Q. That was done in respect to the starboard chain?

A. Right.

Q. Now in respect to your port chain on which you were riding at anchor?

A. Right. [231]

Q. Did you have any trouble disconnecting that on the 18th?

A. We couldn't disconnect it because all of the chain had been run out. Or we—well, there was 810 feet of chain and about 700 feet in the water, and that prevented the pelican hook from operating in

(Testimony of Lawrence Erwin Belford.)

the chain locker, to release it. There was no link in that community that we could separate, so the cutter shot a line aboard and sent a portable welding, burning set aboard and we burned a link loose and let her go.

Mr. Morse: No further questions.

The Court: We will take a recess for a few minutes.

(Recess.) [232]

The Court: Proceed, gentlemen.

Q. (By Mr. McKeon): Mr. Belford, you said that the Balsam approached the Herald while she was lying in the trough of the sea?

A. That's right.

Q. And got a line to the Herald after how many attempts, did you say? A. Oh, quite a few.

Q. Quite a few. What happened to that line when she eventually did get it aboard?

A. The loop where it was spliced back in the line gave way, very shortly after.

Q. It carried away?

A. That's right. It was defective splice.

Q. Did you look at the splice?

A. Not carefully, no.

Q. Why do you say it was defective?

A. The fact that it just slipped out so quickly, got the strain on it and started towing.

Q. In other words, it couldn't stand the strain, whatever the reason it couldn't stand the strain. Is that a fair statement?

(Testimony of Lawrence Erwin Belford.)

A. Well, it is a question of whether there was a strain that caused it to slip out, or a defective splice. Now, I wouldn't know. [233]

Q. You don't know whether it was defective or not, do you?

A. No, but the apparent quick release of it indicated it.

Q. Either that or the strain was too much, one or the other? A. One or the other.

Q. Then you said that the other cutter, the Winona, approached in the same fashion and eventually got a line aboard?

A. That's right.

Q. Were you on deck on both occasions?

A. I was.

Q. So that you know of your own knowledge that both vessels, the Winona and the Balsam, approached and got lines aboard in the same fashion?

A. The larger one of the two, the white cutter, the Winona is the one that put the lines aboard.

Q. The Balsam never got a line aboard?

A. To my knowledge, no.

Q. What did you mean by saying that they approached in the same fashion when they got lines aboard?

A. Well, the smaller cutter of the two wasn't able to get a line aboard.

Q. You never got a line aboard from the Balsam at any time? A. Not to my knowledge.

Q. What was the line that parted, from what cutter was it? A. The larger one.

(Testimony of Lawrence Erwin Belford.)

Q. The larger one? And in any event both of them approached [234] in the same manner?

A. That's right.

Q. And you think only one of them got a line aboard? A. That's right.

Q. That line parted promptly?

A. That's right.

Q. You think that was the larger of the two cutters? A. To my recollection.

Q. Which was the Winona. That is all.

Redirect Examination

By Mr. Morse:

Q. Mr. Belford, did the Coast Guard get a line to your vessel on one occasion or two occasions?

A. Two occasions.

Q. And the first line parted, is that right?

A. Right.

Q. The second line, did that part? A. No.

Q. The first line parted right at the splice?

A. Right.

Q. Normally, when a spliced line parts, does it normally part at the splice, is that the weaker link of the line?

A. That's right. The line did not break, the splice just pulled right out.

Q. Have you ever been employed by Waterman?

A. No, I have been for Sudden & Christenson. Of course, [235] there is a tie-in there, was, I guess.

Q. Never been employed directly. When you

(Testimony of Lawrence Erwin Belford.)

were at anchor just offshore—by the way, about how far was the shore, do you recall having been, at that time?

A. Well, they got us under way again. Let's see, we were seven or eight miles offshore.

Q. I think I asked you this before, did you fear that you were going to drift ashore when you were at anchor? A. Yes.

Q. And in addition to your anchor you did have the tug Sea Fox with a 12-inch manila hawser attached? A. That is right.

Mr. Morse: No further questions.

The Court: Step down.

Mr. McKeon: Just a minute, your Honor; I think the witness is quite different than what he answered in reply to my questions.

Recross-Examination

By Mr. McKeon:

Q. Did the Balsam pass a line to the Herald of the Morning, the Balsam being the smaller cutter?

Mr. Morse: I didn't ask him that, Mr. McKeon; I asked him as to the lines that were passed—

Mr. McKeon: Never mind what you asked, I want to ask the questions, please.

The Witness: The Balsam, that was the smaller of the two? [236]

Q. The smaller. A. No.

Q. She did not? A. No.

Q. And it was the Winona's that got aboard and parted, that is the larger of the two cutters?

(Testimony of Lawrence Erwin Belford.)

A. Right.

Q. So that only one cutter got a line aboard the Herald of the Morning, the Winona, the larger of the two?

A. To the best of my recollection. It was the one cutter that got both lines aboard.

Q. I beg your pardon?

A. It was the one cutter that got both lines aboard.

Q. The one that got both aboard, and on both occasions that single cutter approached the Herald in the same manner and got a line aboard in the same manner?

A. Right.

Q. Did you have any power aboard that vessel at all to haul lines?

A. None at all.

Q. You had nothing but manpower?

A. That's right, and rope falls.

Q. Did you have the rope falls on the steel pennant that the Neptune was trying to get you to take?

A. No, we hadn't had time to secure it. [237]

Q. Just working up there with the pennant itself?

A. That is right.

Q. That pennant is about a hundred and twenty fathoms, isn't it?

A. The length of it?

Q. Yes.

A. Oh, I couldn't say offhand, no.

Q. It is long?

A. Not a hundred and twenty fathoms.

Q. What is its length, fifteen fathoms, twenty?

A. I don't know how much they paid out to us, at least that.

(Testimony of Lawrence Erwin Belford.)

Q. At least twenty? A. Yes.

Mr. McKeon: That is all.

Mr. Morse: No further questions.

(Witness excused.)

JOHN B. SWEETING

called as a witness on behalf of the respondents;
sworn.

The Court: State your full name.

A. John B. Sweeting.

The Court: What is your business or occupation? A. I am a seafaring man.

The Court: In what capacity?

A. Sometimes master, sometimes mate. [238]

Q. How long have you been going to sea?

A. I started when I was sixteen. I made a living by shipping forty years.

The Court: Forty years. Just give us a resume of your various duties you have performed during that period.

A. Well, we were—they had been in the shipyard at Oakland Creek, Graham Shipyard, and prepared for the tow to Everett, Washington, and we were all ready, and the weather was—the trip was postponed one day on account of weather reports from the Red Stack Tow Boat Company that we wouldn't leave until the next day. So to the best of my recollection it was Friday we left.

We got up north—well, as we were going over, outside the main ship channel, the towboat, they

(Testimony of John B. Sweeting.)

went robbing crab pots, and finally we reached Point Reyes and proceeded north to Point Arena when the line carried away. And then we drifted almost back to Point Reyes. And then previous to that, the sea was calm. After the line carried away and we had a line drifted down on the lee side, with two buoys attached to it, and they got ahold of the two buoys and the line and then they left and came back in the morning. Later they came back and told us, the next day, that they had trouble with the towing engine and that the Sea Prince would come and take us up into Drake's Bay, which he did.

And then in the meantime the Sea Fox went robbing the [239] crab pots and the Sea Prince had a lot of trouble to get them back, took about an hour——

Q. (By Mr. Morse): Captain, your objection to the robbing of the crab pots was that you didn't get any crabs, did you?

A. No, sir, didn't get any. And then the Sea Prince she put a—the captain says to me afterwards when he come out and gave us the line, and he was going to give us a bridle, Tony, the deck-hand, objected to the captain giving the bridle, so didn't get it. It was a nice bridle, too.

And then the crew were very dissatisfied because they liked the set-up on the Sea Prince and they didn't like the set-up on the Sea Fox, because the way, they couldn't give us the line; if they had a Lyle gun they could shoot a line across and they

(Testimony of John B. Sweeting.)

would be no trouble at all, and if they had been on the job nine-tenths of the times, on the port bow and sometimes be way abaft or abeam heading the other direction.

The Court: What date is this?

The Witness: That would be a Friday we left, on the 5th. I want to see my—the log book, your Honor.

The Court: Do you have the log book?

The Witness: Number 5, 1948, at 9:30 a.m., let go lines fore and aft, clearing the dock at 0938, that is 9:38 a.m.

The Court: Want to get up to this storm as soon as we can, don't we?

Mr. Morse: Yes, we do, Judge. [240]

Q. What happened after you left Drakes' Bay on up the coast, did you experience weather?

A. Oh, we had ordinary weather, you know, which you experience at that time of the year up and down the coast.

Q. Blew pretty hard, didn't it?

A. It blew——

Q. It blew pretty hard?

A. We got into it here and there it was.

Q. Regardless of what it shows there in the log, at the time of the Sea Fox signalling to you that they were having trouble with their towing engine?

A. They came and told us, yes, when we were adrift. They had—I am not quite clear on that, I think they did, could see with the flashlight.

(Testimony of John B. Sweeting.)

Q. Did they or didn't they indicate to you they had trouble with the towing engine?

A. Yes, they did.

The Court: What time is this?

The Witness: Time the Sea Prince came, the Sea Prince.

The Court: No, I mean after you gone up the coast.

A. On the 14th—now, that is different. Yes, they indicated when we were 19 miles off North Head, that they were having trouble with their towing engine.

Q. (By Mr. Morse): You mentioned North Head, where is that?

A. That is on the Washington Coast, near the Columbia River [241] entrance. We were nineteen miles abreast of it then at that time.

Q. By the way, do you have a master's license unlimited? A. Yes, sir.

Q. Do you have any pilot's license?

A. Columbia River Bar and Columbia River, and San Francisco Bay.

Q. At that time on the 14th and on the 15th, in your opinion, could the tug have taken you through the Columbia River with the existing weather conditions?

A. Yes, sir, that was the only practical thing to do when they had trouble with their towing engine, to turn around and in a few hours, we could have been at—right at the entrance of the Columbia River, because it was only a few miles away.

(Testimony of John B. Sweeting.)

Q. You say you have a pilot's license on the Columbia River and the Bar? A. Yes, sir.

Q. And bearing in mind the weather conditions that were existing those days you think it was feasible to have gone——

A. Oh, most simple, quite simple, practically no wind to speak of and the Bar was smooth, practically smooth, because the wind had been coming from the northwest and the Bar is protected from a wind of that kind.

The Court: On the 14th?

The Witness: Sunday, the 14th, yes, sir, your Honor. [242]

Q. (By Mr. Morse): Will you look in your log to see what the weather, which direction the wind was from on the 14th?

A. Oh, I will see, then—but the point I want to make is a strong wind had been from the northwest, there was a change, I know. Let's see, the 14th, morning of the 14th, 4 a.m., six, seven in my log.

Mr. McKeon: Six, seven force?

The Witness: Yes, six, seven force, eight——

Q. (By Mr. Morse): Which direction?

A. South. Eight a.m. southeast seven. Twelve o'clock southwest seven. Four o'clock, west southwest seven. North Head abeam distance twenty miles, that is at nineteen hundred, that is 7 p.m. Twenty-one forty cutter Wagh 62 arrived from Astoria.

(Testimony of John B. Sweeting.)

Q. Captain, when did the Herald of the Morning break adrift? [243]

A. We had California time, daylight; it was different to Washington's time, so there was one hour's difference in the time. It was—But the right time was 0040, or forty minutes after 12 a.m. on Tuesday, the 16th, 1948.

Q. What was the weather at that time?

A. The weather—well, it was ordinary weather. I wouldn't call it extremely rough. But it wasn't fine.

The Court: What does the log show there on the 16th?

A. 16th?

Q. (By Mr. Morse): You wouldn't want to be out there in a canoe, though, would you, Captain?

A. No, sir, I would not, no.

South-West 6, West-South West 5 force.

Q. What hour? At what time, Captain?

A. At 4 p.m.

Mr. McKeon: On the 16th?

The Witness: Yes.

Q. (By Mr. Morse): 4 p.m.?

The Witness: M-hm.

Q. (By Mr. Morse): What about earlier on the 16th? A. It is not there.

Q. You have two logs there, one is a rough log and one is the smooth log. To which are you now referring? [244]

A. That was the smooth log. I am referring now to the rough log.

(Testimony of John B. Sweeting.)

Q. I think at 8 o'clock in your log is your only morning entry.

A. Well, you see, on that morning, the Neptune——

Q. Just read the weather entries. That is all the Judge wants.

Mr. McKeon: Well, wait a minute, wait a minute. I think he can use the log for the purpose of refreshing his recollection, your Honor.

The Court: Well, that is what he is trying to do.

The Witness: Well now, it is not here.

Mr. McKeon: It is not here?

The Witness: 4 p.m. is the first instance of the weather.

Q. (By Mr. Morse): Captain, look on the other sheet. I think you will find an entry at 8 a.m.

A. Well, I don't see it. Oh, yes, vessel drifting in southerly gale. No power, helpless. Tug Sea Fox—yes. Southerly gale, yes.

Mr. McKeon: What hour is that, Captain?

The Witness: That is 8 a.m. No. Yes. No, no, that is 8 at night. That is 8 at night.

Q. (By Mr. Morse): Isn't that 0800, Captain?

A. Sir?

Q. Isn't that 0800? [245]

A. Yes, 0800. That's right, 0800. That's right, that's 8 a.m. That is on the other sheet, though. You see, it was a hectic time then. We had been taking lines from the Balsam and we took one, she shot one across, and then changed their mind and then they came back again.

(Testimony of John B. Sweeting.)

The Court: On the 16th?

A. On the 16th, yes, sir.

We finally got that line and it carried away where it made contact with the ship, and it was really—And then another ship had come up alongside of us and we were all very busy then and we were concerned mostly, your Honor, concerned about the lines, taking the lines from the different vessels that attempt, or made the attempt to get one to us. That's why we overlooked this entry in the log.

Q. (By Mr. Morse): Captain, did you get a line from the Balsam on the 16th?

A. Yes, sir, we did.

Q. Is it noted in your log?

A. Yes. Let me see. But it didn't last long. It carried it away.

Q. What is the notation in your log about the Balsam?

A. It says about the Neptune being alongside at 8:30, for a tow line. "All hands standing by. Run messenger line over the side." I don't see anything about the Balsam. But Captain Sprague, the Captain of the Neptune—— [246]

Q. Just a moment, please.

A. (Continuing): He was on——

Q. Just a moment, please. There is no entry in your log on that date for the Balsam, is that correct?

A. Well, it may be here, but I don't see it.

(Testimony of John B. Sweeting.)

Q. Well, I think as a matter of fact there is no such entry?

Mr. McKeon: Is counsel testifying?

Mr. Morse: I think I could testify on that, Judge.

The Court: Well, he has some difficulty here.

Mr. Morse: I think the fact of the matter is, there is no entry on the 16th with reference to the Balsam.

The Court: All right.

Q. (By Mr. Morse): There is an entry with reference to the Neptune, however?

A. Yes, on the lee bow.

Q. On the lee bow; is that what it says?

A. Yes, that's right. He failed to make it, to get the line to us, see.

Q. He tried to get it?

A. He failed to do it.

Q. Well, what is the entry in your log?

A. 8:30, "Neptune, tug Neptune alongside to put tow cable aboard. All hands standing by."

0900. "Run messenger line over side. Hauled in cable. Same became * * *" "and tug" * * * "took—too close to [247] ship stem, was hit."

Oh, this is when she was hit, yes. I was confused on that. That's it.

Q. Captain, were you up there on the fo'c'sle head when the Neptune was attempting to put a line to your ship?

A. Yes.

Mr. McKeon: Pardon me. May I look at that?

(Testimony of John B. Sweeting.)

Q. (By Mr. Morse): Are you paying attention to me, Captain? A. Yes, sir.

Q. Now, was the Neptune on your lee bow or on your weather bow?

A. You mean the first time?

Q. When she was holed, when she was struck.

A. Oh, she was on our weather bow.

Q. Had she come up on a previous occasion?

A. Yes, on the lee bow.

Q. I see. And on that previous occasion she had not gotten a messenger line to you, when she came up on your lee bow?

A. She did, she got—we got the heaving line to them and they got it and they hauled on the messenger, but then they went away, they didn't make the attempt at all. They didn't complete the job.

Q. What time of the day was that that she was on your lee bow?

A. Oh, as near as I can remember, it was 11 o'clock at night. [248] I am not sure of the time. But I remember the incident.

Q. In other words, it was the night preceding the day she was sunk? A. That's right.

Q. I see. So——

A. (Continuing): I might be wrong in the time a little.

Q. But it was night time, anyway?

A. Night time.

Q. And dark? A. On the lee bow, yes.

Q. But when she came up on the weather bow,

(Testimony of John B. Sweeting.)

that was the time you were getting the wire across to your vessel?

A. Yes. We didn't quite get it over in through the leads, and it was pulled out of our hands. They pulled it out. That was one time that—then they made another attempt and that was the time the trouble started. They got broadside onto the sea and the stem of the Herald cut through the bilge.

Q. About how long on this occasion when she was in collision with your vessel, had the Neptune had been right forward of you trying to get the line to you? A. One hour; about one hour.

Q. Had the Balsam put a ten inch line to you before or after the Neptune had been in collision with you? A. Before.

Q. And they had gotten a messenger line to you by means of [249] their Lyle gun? A. Yes.

Q. By the means of their Lyle gun, is that correct? The Balsam?

A. (Nodding head in the affirmative.)

Q. Now——

The Court: You must answer. He must get it down. What is the answer?

The Witness: Sir, what is it?

The Court: He shook his head; he didn't answer.

Q. (By Mr. Morse): You shook your head. Did you mean yes or no?

A. Well, what is the question again? Do you remember?

Q. How did the Balsam get a line to you?

(Testimony of John B. Sweeting.)

A. Oh, by a Lyle gun. She shot a tape and then a bigger tape and then a bigger tape, and then a smaller line and then a messenger and then the tow line. That's how it runs.

Q. You drifted all during the day of the 16th, is that correct? A. Yes, sir. ..

Q. Until it was dark? A. Yes, sir, yes.

Q. And then you anchored? A. Yes.

Q. Under whose orders? [250]

A. The Sea Fox, Captain of the Sea Fox.

Q. They came over to you and directed you to drop your anchor? A. Yes.

Q. Do you recall what he said to you?

A. "Drop your anchor." And I said, "Who said so?" because I had already had the understanding that if there was a case of any orders, that the Captain of the Sea Fox was in charge. So I was taking my orders from him. Although I had a little trouble with the mate. He kept, you know, he kept taking——

Q. All right. Did the Captain of the Sea Fox say whose orders they were?

A. No, not at that time.

Q. Anyway, you did drop your anchor, or didn't you?

A. Yes, dropped the anchor at the Captain of the Sea Fox's orders, yes.

Q. And the following morning did a vessel put a line to you? A. Yes.

Q. When you were still at anchor?

A. Yes.

(Testimony of John B. Sweeting.)

Q. Which vessel was it?

A. The revenue vessel, Winona—the Winona.

Q. What happened then?

A. She passed it over to—she gave us the line by a lee [251] gun. She come over, come up on the lee bow. Everything come up on the lee bow up until that time and the only exception was the Neptune.

Q. And the Winona passed its line to the Sea Fox?

A. Yes.

Q. Captain, did the weather worsen on the 18th after you were taken in tow?

A. Oh, no, it got much better. It was much better. I want to refer——

Q. What does your log show as to the weather on the 18th?

A. 18th?

Mr. McKeon: Here it is here, Captain.

Mr. Morse: He has the smooth log.

Mr. McKeon: This is the log of original entry?

The Witness: You want the 18th weather?

Mr. Morse: Yes.

Mr. McKeon: There is your rough log, Captain (handing to the witness).

Mr. Morse: Mr. McKeon, he has both the smooth and the rough log there.

The Witness: All right.

A. 4 a.m., the 18th. Easterly 3, west 3, south-east 4.

Q. (By Mr. Morse): Wait a minute. What are the hours here?

A. 4 a.m., easterly 3. 8 a.m., westerly 3. Noon,

(Testimony of John B. Sweeting.)

south-east 4. 4 p.m., south-east 6. 8 o'clock, south-east 7. [252] Midnight, south-east 7.

Q. Now bearing in mind the wind and weather as shown there on your log, had you stayed at anchor on the 18th instead of being towed into Everett, in your opinion would you have drifted ashore?

A. No, sir, we would not, because, I would like to say that, we had weathered the storm and then when we got the line, we were perfectly safe when we had the line from the Sea Fox. We had nothing to worry about.

Q. The Sea Fox plus the anchor, you had nothing to worry about? A. Sir?

Q. The Sea Fox plus your anchor—you had nothing to worry about?

A. Then we were safe, because we had weathered it with the anchor alone, a heavier wind and heavier seas. So in my opinion, I no longer worried. I had worried up until that time, but then when I had the Sea Fox's tow line, I had nothing to worry about. I was free from all worry.

Q. In addition, were there any other vessels besides the Sea Fox in your vicinity?

A. In addition?

Q. When you were at anchor?

A. Oh, the Balsam, Sea Fox, Winona and then the Hercules came up later. [253]

Mr. Morse: No further questions.

(Testimony of John B. Sweeting.)

Cross-Examination

By Mr. McKeon:

Q. Captain Sweeting, you had how many men aboard your Herald?

A. Sixteen, including myself.

Q. And a chief officer? A. Yes, sir.

Q. A second officer?

A. A second officer and a third officer.

Q. And a third officer?

A. Third officer, yes.

Q. And yourself. So that you had four licensed men on board? A. Yes, that's right.

Q. And there was really a sort of knock-down, skeleton crew to take that dead ship up?

A. It was a crew approved by the Bureau of Shipping, those in authority; it was a crew approved by them.

Q. Well, you just joined the Herald to take her up there, didn't you? A. Yes, that's right.

Q. What was the last command prior to the Herald that you had? A. The Cosatot.

Q. The what? [254]

A. Cosatot. The United States Navy tanker Cosatot.

Q. During the war?

A. No, on a run up there, a run up to Seattle.

Q. For repairs? A. Sir?

Q. For repairs? A. Yes.

Q. She was towed up there? A. Yes.

Q. But what was the last command you had as

(Testimony of John B. Sweeting.)

a Master of a steamer or a steam schooner going out prior to '48? A. '48?

Q. Yes.

A. I didn't have any, but I have had lots of experience. I have had experience as mate, second mate, third and all kinds of vessels.

Q. But you have never taken a ship out under her own power? A. Where?

Q. To sea as a master, have you?

A. To sea?

Q. Yes.

A. No, but I will tell you, I would like to say my license was used on three trips over the Columbia River bar.

Mr. McKeon: That's all, your Honor.

Mr. Morse: One other question. [255]

Redirect Examination

By Mr. Morse:

Q. Did you ever work for shipowners?

A. Yes.

Q. For how long? A. Five years.

Q. In what capacity?

A. Mates, second mate, deckhand.

Q. On tugs? A. Yes, on tugs.

Q. Did you go offshore with them?

A. Yes, lots of experience offshore there. I mean, along the coast, yes, coastwise, towing.

Mr. Morse: No further questions.

(Witness excused.)

Mr. McKeon: The log?

The Court: The log books are here, both of them (indicating).

Mr. Morse: Do you wish to have them identified?

Mr. McKeon: Well, I don't know what you planned to do with them. I just wanted—I haven't had a chance to look at that log.

Mr. Morse: You may look at either or all of them, if you wish, Mr. McKeon. I wish to offer at this time the deposition of Captain F. G. Eastman, taken on behalf of Waterman Steamship Corporation. Captain Eastman was the Master of the [256] Coast Guard cutter Winona. And I offer that together with the attached exhibits.

Mr. McKeon: Well now, if the Court please, the deposition has been taken on stipulation, and I don't think the exhibits to which they refer are admissible in evidence, and when you take a man's deposition, he is supposed to testify and not merely introduce some report he made to somebody else. We have not had the opportunity of cross-examining the witness on his reports, and——

Mr. Morse: You had the opportunity of cross-examining Captain Eastman. He was in charge of the vessel and the deposition speaks for itself as to the—I think Mr. McKeon is referring to the weather at various times.

Mr. McKeon: Let me—I am referring to—let me state my position, your Honor. There isn't anything that I don't want your Honor to have, and I think that's peculiarly true in a case of this sort.

I don't think these exhibits are admissible in evidence on any theory, but I am perfectly willing to have the record go in.

Mr. Morse: All right, then, there is no objection?

Mr. McKeon: You put it to me in such a fashion that I don't want to be——

Mr. Morse: Also offer in evidence the deposition of Lieutenant Frank G. Schmitz, who was master of the Coast Guard cutter Winona, together with attached exhibits in each case, [257] in each instance.

The Clerk: The first one, Captain Eastman's, is marked as respondent's Exhibit F and respondent's Exhibit G on Lieutenant Schmitz, admitted and filed in evidence.

(Whereupon depositions of Captain Eastman and Lieutenant Schmitz, referred to above, were received in evidence and marked respondents' Exhibits F and G, respectively.)

Mr. Morse: Mr. McKeon, would you be willing to stipulate that the towing or towage account of \$5,750 plus tax has been received by shipowners?

Mr. McKeon: I don't know what the fact is. If you state it has been—I don't know; I really don't know.

Mr. Morse: I don't know either, Mr. McKeon.

Mr. McKeon: I don't know whether it has or not.

Mr. Morse: So we will find out the facts.

The Court: It is nearly time to adjourn. You may check it over the noon hour.

Mr. McKeon: I think we might finish up, your Honor; don't you think, Mr. Morse, in a minute or two?

Mr. Morse: It would be a matter of ten or fifteen minutes.

The Court: Very well.

Mr. Morse: I am perfectly willing to come back if you prefer.

The Court: I thought you possibly had something that you [258] wanted to——

Mr. McKeon: Well, I wouldn't want to impose on your Honor, no. I thought possibly we could finish up in a minute or two. I think we can come back at two, then.

The Court: Well, whatever you wish.

Mr. McKeon: I think we are all inclined to take advantage of the Court, and——

Mr. Morse: I think it would be better if we came back at two.

The Court: Very well.

(Whereupon a recess was taken until two o'clock p.m. this day.) [259]

January 22, 1951, at 2 o'Clock P.M.

The Court: Proceed.

Mr. Morse: We are offering as respondent's exhibit next in order a letter from the Weather Bureau Office, Seattle-Tacoma Airport, dated De-

ember 23rd, 1949, with two sheets attached, as being the "storm warnings which were issued during the year and are enclosing copies of storm warnings for the period November 1st to 20th, inclusive, 1948."

Mr. McKeon: That is the other one?

Mr. Morse: Yes, sir.

The Clerk: Respondent's Exhibit H admitted and filed in evidence.

(Whereupon Seattle-Tacoma Airport storm warnings dated 12/23/49, referred to above, were received in evidence and marked Respondent's Exhibit H.)

RESPONDENT'S EXHIBIT H

United States Department of Commerce
Weather Bureau

Weather Bureau Office,
Seattle-Tacoma Airport,
Seattle 88, Washington.

December 23, 1949

Graham & Morse,
Attorneys at Law,
310 Sansome Street,
San Francisco 4, California.

Gentlemen:

In reply to your request of December 16, 1949, for twice-daily forecasts for the period November 1 through November 20, 1948, issued by this office, you are advised that this office moved from its location at Boeing Field to the Seattle-Tacoma Air-

port on November 30 of this year and at the time of the move the entire file for the year 1948 was lost.

However, we do have in our files the storm warnings which were issued during the year and are enclosing copies of the storm warnings for the period November 1 to 20 inclusive, 1948.

It is hoped that this information will serve your purpose.

Very truly yours,

/s/ THOMAS E. JERMIN,

Supervising District
Forecaster.

encl.

TEJ/elp

Storm Warnings, November 1 to 20, Incl., 1948

November 1, 1948.

Hoist northeast storm warnings 0530 Mouth Columbia to Cape Blanco for northeast winds increasing locally to 30-45 mph decreasing tonight. Small craft warnings Washington Coast north Mouth Columbia to Tatoosh Island for increasing northeast winds, 25-30 mph.

November 2, 1948.

Hoist southeast storm warnings 7:00 a.m. Tatoosh Island to Cape Blanco and Inland Washington Waters for increasing southerly winds reaching 40-50 mph this afternoon, veering to westerly Wednesday.

November 3, 1948.

Change southeast warnings to southwest storm warnings 7:00 a.m. for westerly winds 35-45 mph Tatoosh to Cape Blanco and all Washington waters decreasing to 25-35 mph tonight.

November 4, 1948.

Continue southwest storm warnings Tatoosh Island to mouth Columbia for increasing southwest winds reaching 30-40 mph this afternoon veering to westerly Friday.

November 4, 1949.

Southeast storm warnings ordered 3:00 p.m. to 7:00 a.m. Friday, Oregon Coast mouth of Columbia to Cape Blanco for increasing southerly winds reaching 30-40 mph early tonight shifting to westerly by morning and decreasing. Southeasterly storm warnings ordered inland waters Washington and Straits of Juan de Fuca 3:00 p.m. to 7:00 a.m. Friday for increasing southeasterly winds reaching 30-40 mph this evening shifting to westerly by morning and decreasing.

November 13, 1948.

Southeast storm warnings ordered displayed Washington Coast and mouth of Columbia, small craft warnings south of Astoria to Cape Blanco and over inland waters of Washington 3:00 p.m. for southeasterly winds 35-45 mph Washington Coast, and 25-35 mph Oregon Coast tonight, shifting to westerly early Sunday and decreasing, and southerly winds 20-30 mph over inland waters.

November 14, 1948.

Change storm warnings to southwest storm warnings Washington Coast. Continue small craft warnings Oregon Coast, inland waters Washington and Strait of Juan de Fuca 3:00 p.m. southwesterly winds 30-40 mph off coast this evening becoming westerly and decreasing to 25-35 mph Monday. Southerly winds 25-35 mph inland waters, easterly 25-35 thru Straits tonight decreasing Monday.

November 15, 1948.

Lower storm warnings Washington Coast and mouth of Columbia 10:00 a.m. Hoist small craft till 3:00 p.m. Continue small craft Oregon Coast inland waters Washington, Strait of Juan de Fuca till 3:00 p.m.

November 15, 1949.

Hoist southeast storm warnings 5:00 p.m. coastal stations Tatoosh Island to Cape Blanco for increasing southerly winds 30-45 mph shifting to westerly Tuesday. Hoist small craft warnings thru Straits Juan de Fuca 5:00 p.m. for southeast winds 20-30 mph.

November 15, 1948.

Southeast storm warnings were hoisted 10:00 p.m. thru Straights on the Sound for increasing southerly winds 30-45 mph.

November 16, 1948.

Change storm warnings to small craft warnings 5:00 p.m. for gusty southwesterly winds tonight and

early Wednesday inland waters Washington and on Coast from Tatoosh thru mouth of Columbia.

November 18, 1948.

Hoist Southeast storm warnings 9:00 a.m. to 4:00 a.m. Puget Sound and Washington inland waters. Increasing southerly winds 30-40 mph.

November 19, 1948.

Change storm warnings to SW 4:00 a.m. Coast Washington and Oregon, Tatoosh to Cape Blanco for southwesterly winds 35-45 mph this morning, becoming northwesterly this afternoon and decreasing to 15-25 mph by early Saturday.

[Endorsed]: Filed January 22, 1951.

Mr. Morse: And for respondent's exhibit next in order, a letter from the Weather Bureau forecast center, San Bruno, dated December 16, with eight attached sheets, being "all forecasts and warnings for the Coastal area from Cape Blanco to Point Conception that were issued by the forecast center during the period from November 1 to 20th, 1948."

The Clerk: Respondent's I admitted and filed in evidence.

(Whereupon San Bruno Weather Bureau forecasts dated 11/1/48 to 11/20/48, referred to above, were received in evidence and marked Respondent's Exhibit I.) [260]

RESPONDENT'S EXHIBIT I

United States Department of Commerce

Weather Bureau

Forecast Center

San Bruno, California

December 16, 1949

Mr. F. L. Tetreault,
Graham and Morse,
310 Sansome St.,
San Francisco 4, California.

Dear Mr. Tetreault:

In compliance with your telephone request to Mr. Vernon yesterday we have attached herewith copies of all forecasts and warnings for the coastal area from Cape Blanco to Point Conception that were issued by the Forecast Center during the period from November 1 to 20, 1948.

Very truly yours,

EDWARD M. VERNON,

Official in Charge.

By /s/ MARK J. COCUZZI,

Technical Assistant.

Encls.

[In margin]: Herald of the Morning.

Respondent's Exhibit I—(Continued)

Weather Bureau Airport Station

San Bruno, California

Forecasts Issued for the Coastal Area from Cape Blanco to Point Conception for the period November 1 to 20, 1948

Nov. 1, 1948, 0630 PST

Strong to gale force winds Pt. Arena to Cape Blanco and moderate to fresh southerly Pt. Arena to Pt. Sur and moderate westerly south of Pt. Sur today and tonight. Rain north of Monterey today and extending to near Pt. Conception during night.

Nov. 1, 1948, 1830 PST

Moderate to fresh southwesterly winds with occasional rain tonight and Tuesday.

Nov. 2, 1948, 0630 PST

Moderate southerly winds and partly cloudy weather from Pt. Sur north to Cape Blanco, Oregon, increasing to strong southerly from Pt. Reyes northward tonight with rain. Moderate northwest winds today and tonight south of Pt. Sur backing to southwest late tonight. Fair weather with increasing cloudiness tonight.

Nov. 2, 1948, 1830 PST

Moderate to fresh southwesterly winds tonight and Wednesday, except occasional strong north of Pt. Reyes. Cloudy with occasional rain.

Nov. 3, 1948, 0630 PST

Light northwest winds early this morning increasing to 20 to 25 mph this afternoon and tonight.

Respondent's Exhibit I—(Continued)

Partly cloudy weather with a few scattered light showers yet today and clearing tonight.

Nov. 3, 1948, 1830 PST

Fresh northwest winds tonight subsiding Thursday. Fair weather becoming cloudy north of Pt. Arena Thursday.

Nov. 4, 1948, 0630 PST

Moderate northerly winds today and becoming gentle southwest tonight north of Cape Mendocino. Fresh northerly winds today and tonight from Pt. Reyes to Pt. Conception decreasing late tonight. Fair weather except for increasing clouds tonight north of Cape Mendocino.

Nov. 4, 1948, 1830 PST

Moderate northwesterly winds tonight becoming gentle variable Friday, except fresh northwesterly near Pt. Conception tonight and Friday. Fair weather.

Nov. 5, 1948, 0630 PST

Gentle northerly winds and clear weather today and tonight.

Nov. 5, 1948, 1830 PST

Gentle variable winds tonight becoming gentle to moderate northerly Saturday. Fair except patches of fog tonight and early Saturday.

Nov. 6, 1948, 0630 PST

Moderate northwest winds today and tonight. Fair weather except for local fog today south of Mon-

Respondent's Exhibit I—(Continued)

terey and north of Pt. Reyes with fog increasing tonight.

Nov. 6, 1948, 1830 PST

Moderate to fresh northwesterly winds tonight and Sunday. Cloudy with local fog.

Nov. 7, 1948, 0630 PST

Moderate to fresh northwesterly winds today and tonight, except gentle variable north of Cape Mendocino. Fair weather.

Nov. 7, 1948, 1830 PST

Fresh to strong and northwest winds tonight and Monday. Clear.

Nov. 8, 1948, 0630 PST

Fresh to locally strong north to northeast winds with clear weather today and tonight.

Nov. 8, 1948, 1830 PST

Gentle to moderate east or northeast winds north of Pt. Reyes and gentle to moderate southerly winds Pt. Reyes to Pt. Conception tonight and Tuesday. Clear.

Nov. 9, 1948, 0630 PST

Gentle to occasionally moderate changeable winds today and tonight, with fair weather.

Nov. 9, 1948, 1830 PST

Gentle variable winds tonight and Wednesday. Clear.

Nov 10, 1948, 0630 PST

Gentle to moderate northerly winds today and tonight with fair weather.

Respondent's Exhibit I—(Continued)

Nov. 10, 1948, 1830 PST

Gentle to moderate northwest winds. Fair weather.

Nov. 11, 1948, 0630 PST

Gentle to moderate northerly winds with fair weather. Occasional fog north coast.

Nov. 11, 1948, 1830 PST

Gentle variable winds tonight and Friday becoming mostly northwesterly on Friday afternoon. Clear except for some local early morning fog areas.

Nov. 12, 1948, 0630 PST

Gentle north and northwest winds becoming 12 to 18 mph this afternoon and tonight. Fair weather except for local fog north of Fort Bragg and patches of fog forming elsewhere tonight.

Nov. 12, 1948, 1830 PST

Gentle to moderate west to northwest winds tonight and Saturday. Local fog or low clouds mainly from near San Francisco north and fair otherwise, except for some light rain north of Crescent City late tonight and Saturday morning.

Nov. 13, 1948, 0630 PST

Northwest winds 8 to 12 mph today and tonight. Fair weather except for a few patches of fog this morning.

Nov. 13, 1948, 1830 PST

Gentle to moderate west to northwest winds from San Francisco south and moderate to fresh southerly northward tonight and Sunday. Local fog to-

Respondent's Exhibit I—(Continued)

night and Sunday morning becoming cloudy from Pt. Sur north and with light rain from Pt. Arena north Sunday spreading to near Pt. Reyes by afternoon.

Nov. 14, 1948, 0630 PST

Gentle variable winds today and tonight, except moderate to occasionally fresh southerly north of Pt. Arena. Cloudy north of Pt. Arena with rain tonight but considerable fog south portion with fair weather this afternoon.

Nov. 14, 1948, 1830 PST

Fresh to strong southerly winds north of Pt. Arena tonight becoming westerly Monday. Moderate west and northwest winds south of Pt. Arena to Pt. Conception. Cloudy with occasional rain north of Pt. Arena tonight, spreading to Monterey early Monday.

Nov. 15, 1948, 0630 PST

Moderate to fresh southwesterly winds north of San Francisco and moderate west to northwest south of San Francisco. Cloudy weather with occasional rain north of Monterey today and tonight.

Nov. 15, 1948, 1830 PST

Moderate to fresh southerly winds tonight from Pt. Arena north and gentle variable elsewhere. Fresh to strong southerly winds Tuesday from near Pt. Reyes north and gentle to moderate southerly elsewhere. Cloudy from near Pt. Arena north, becoming cloudy from near Pt. San Luis north

Respondent's Exhibit I—(Continued)

Tuesday, with rain from Pt. Arena north in morning spreading south to San Francisco by late afternoon or evening.

Nov. 16, 1949, 0630 PST

Strong to gale force southeast and south winds Cape Blanco to Pt. Reyes becoming westerly and decreasing tonight with intermittent rain. Increasing southerly winds Pt. Reyes to Pt. Sur reaching 25 to 30 mph this afternoon and early tonight becoming westerly late tonight. Occasional rain beginning this afternoon. Gentle northwest winds to the south of Pt. Sur becoming moderate southerly and cloudy tonight with light rain late tonight.

Nov. 16, 1948, 1830 PST

Moderate to occasionally fresh northwest winds tonight and Wednesday with fair to partly cloudy skies.

Nov. 17, 1948, 0630 PST

Fresh northwest winds today becoming light to moderate tonight. Fair weather.

Nov. 17, 1948, 1830 PST

Moderate northwest winds tonight becoming gentle Thursday except occasionally fresh near Pt. Conception. Fair weather.

Nov. 18, 1948, 0630 PST

Moderate northwest winds from Cape Mendocino to Pt. Conception today, becoming gentle tonight with fair or occasional high cloudiness. From Cape

Respondent's Exhibit I—(Continued)

Mendocino to Cape Blanco moderate southwest winds today and tonight with cloudy weather.

Nov. 18, 1948, 1830 PST

Increasing southerly winds north of Cape Mendocino tonight becoming strong to gale and then decreasing Friday. Moderate southwesterly winds south of Cape Mendocino to the Farallones and Gentle to Moderate variable southward to Pt. Conception. Rain north of Fort Bragg and variable high cloudiness elsewhere.

Nov. 19, 1948, 0630 PST

Fresh southerly winds Cape Blanco to Pt. Sur becoming westerly this afternoon and fresh west and northwest tonight. Light showers clearing this afternoon. Moderate westerly winds south of Pt. Sur with cloudy weather today and tonight. Fresh northwest winds and fair entire area Saturday.

Nov. 19, 1948, 1830 PST

Moderate to fresh northwest winds tonight and Saturday. Partly cloudy.

Nov. 20, 1948, 0630 PST

Moderate to fresh northwest winds diminishing tonight and Sunday. Fair weather.

Nov. 20, 1948, 1830 PST

Gentle to moderate northwesterly winds tonight and Sunday, with fair weather.

Respondent's Exhibit I—(Continued)

Weather Bureau Airport Station
San Bruno, California
Storm Warnings* Issued for the Period
November 1-7, 1948
*and Smallercraft

November 1, 1948, 1130 GCT

Southeast storm warnings were hoisted at 1130-GCT Monday Point Arena, California, northward to Cape Blanco, Oregon, for strong to gale winds next 24 hours. Intense storm centered at 0630 GCT about 350 miles west-northwest of Eureka apparently moving east-northeastwardly.

CHAPPELL.

November 1, 1948, 2100 GCT

Smallercraft warnings ordered 1330 PST Monday San Francisco Bay and on coast south of Point Arena to Point Sur. Southeast storm warnings are displayed until 0330 PST, Tuesday, Point Arena to Cape Blanco.

WILGUS.

November 2, 1948, 1600 GCT

Smallercraft warnings continue 0700 PST today from Point Sur to the Oregon border for moderate southerly wind increasing to 25 to 35 mph from Cape Mendocino north and 20 to 25 mph south to Point Sur later tonight. Intense storm 600 miles off British Columbia coast with marked storm front south to latitude 40.

COUNTS.

Respondent's Exhibit I—(Continued)

November 4, 1948, 1535 GCT

Smaller craft warnings ordered at 0600 PST in San Francisco Bay region until noon today except till sunset on Suisun Bay. North and northeast wind 25 to 35 mph subsiding this afternoon.

COUNTS.

November 7, 1948, 1650 GCT

Smaller craft warnings will be displayed from 0900 PST until sunset today in the San Francisco Bay Region for northeasterly winds 25 to 35 mph.

RASEY.

November 7, 1948, 2130 GCT

Smaller craft warnings are displayed until 1200 PST Monday on the northern California coast from Point Conception northward for northeast wind 25 to 35 mph.

QUINN.

November 8, 1948, 0900 PST

Continue smaller craft warnings from 2000 GCT Monday until 0000 GCT Tuesday over the San Francisco Bay Region for easterly winds 20-30 mph.

RASEY.

Weather Bureau Airport Station

San Bruno, California

Storm Warnings Issued for the Period

November 15-21, 1948

November 14, 1948, 1230 PST

Hoist smaller craft warnings 1 p.m. PST for south-

Respondent's Exhibit I—(Continued)

erly winds 25 to 35 mph Cape Blanco to Pt. Arena today shifting to westerly tonight.

RASEY.

November 16, 1948, 1520 PST

Hoist southeast storm warning six a.m. PST Point Reyes to Cape Blanco, Oregon, for strong to gale force southeast and south wind today shifting to westerly and decreasing tonight. Hoist smallcraft warning same time south of Point Reyes to Point Sur for southerly wind 25 to 30 mph this afternoon and evening shifting to westerly and decreasing early Wednesday.

COUNTS.

November 16, 1948, 2015 PST

Lower storm warnings 830 p.m. PST from Cape Blanco to Pt. Reyes.

RASEY.

November 18, 1948, 1700 PST

Hoist southeast storm warnings 1800 PST Cape Blanco to Cape Mendocino for strong to gale southerly winds tonight. Warnings to continue until 1000 PST Friday.

R.V.W.

November 19, 1948, 0115 PST

Hoist smallcraft warnings 0400 PST and continue until 1800 PST Friday south of Cape Mendocino to Point Montara for southerly winds twenty to thirty miles per hour today shifting to westerly and decreasing tonight.

WILGUS.

Respondent's Exhibit I—(Continued)

November 19, 1948, 0845 PST

Lower all storm and smallcraft warnings from Cape Blanco to Point Montara 0900 PST.

COUNTS.

[Endorsed]: Filed January 22, 1951.

Mr. Morse: And also a big batch of material which, according to the Coast Guard letter to ourselves dated 24 January, 1950, constitutes "All available weather broadcast scripts transmitted by Coast Guard radio stations, Westport, Washington, M.N.W. and San Francisco, San Bruno, California, N.M.C. for the period 1/20/48."

The Clerk: Respondent's J admitted and filed in evidence.

(Whereupon Coast Guard weather scripts referred to above were received in evidence and marked Respondent's Exhibit J.)

Mr. Morse: In order that the Court be advised of the different points and locations to which the record has referred, we are supplying a chart of the coast. I don't care whether it is marked as an exhibit, but it is available for the Court's information.

The Court: Well, I would like to analyze this. There has been much of this matter going in here that I can't follow. For example, is there any controversy about the weather at any time?

Mr. Morse: No substantial controversy, no, sir.

The Court: Is there any controversy about the shore line and the distances?

Mr. Morse: No, sir, no; none at all.

The Court: Why encumber the record?

Mr. Morse: Pardon me? I thought this would be desirable only for the purpose of indicating to the Court when the witness [261] referred to Cape Blanco or Point Conception or something of that sort, where they were.

The Court: Very well, it may be admitted.

Mr. Morse: So I suggest this be marked as respondent's next in order.

Mr. McKeon: The only thought I had would be that it would be encumbering the record. I suggested to Mr. Morse that we could stipulate that if the Court wanted to refer to that chart, he could do so or call for one and we would produce it. It is a Government chart with a number on it; any of us could refer to it without it going in evidence.

Mr. Morse: Well, that is acceptable to me. The only thought I had was, it might be of some assistance to the Court.

The Court: All right.

The Clerk: Do you want it marked?

Mr. Morse: Yes, please.

The Clerk: Respondent's K.

(Whereupon Coastal chart referred to above was received in evidence and marked Respondent's Exhibit K.)

Mr. Morse: I also now offer in evidence the ex-

hibits which were marked respondent's for identification.

The Clerk: The logs?

Mr. Morse: Off the record.

(Discussion between Messrs. Morse and McKeon out of [262] hearing of the Court Reporter.)

Mr. Morse: In order to clarify the matter, I will offer in evidence all exhibits which hertofore have been marked for identification.

The Clerk: All right.

The Court: They may be admitted and marked. Any objection?

Mr. McKeon: No.

The Clerk: A and B admitted and filed in evidence.

Mr. Morse: Also that would include libelant's exhibits as well as respondents.

The Clerk: Are you speaking for libelants as well as respondents?

Mr. Morse: Yes, all exhibits.

Mr. McKeon: All exhibits may be admitted in evidence.

The Clerk: Respondents' A and B admitted and filed in evidence and libelants' 1, 2, 3 and 4 admitted and filed in evidence.

Mr. Morse: And I suggest——

Mr. McKeon: Those are the ones that have been marked for identification?

The Clerk: Yes, that's right, they are.

(Whereupon Respondents' Exhibits A and B and Libelants' Exhibits 1, 2, 3 and 4 for identification only were received in evidence.) [263]

Mr. Morse: And I suggest that for ease in reviewing the record that they be given identical exhibits in evidence numbers that they were marked with heretofore.

The Clerk: Yes.

Mr. Morse: Mr. McKeon, have you had an opportunity to verify whether shipowners was paid the \$5,750?

Mr. McKeon: Yes, that bill has been paid.

Mr. Morse: So stipulated.

I have offered in evidence the depositions of the two Coast Guard ship masters. Now——

The Court: Are they lengthy?

Mr. McKeon: No, they are not lengthy.

The Court: Read them in the record so there will be no question about it.

Mr. McKeon: Well, I am willing to have them deemed read.

The Court: I would like to have them read now.

Mr. McKeon: Very well, no objection.

The Court: Will that conclude the evidence then?

Mr. Morse: Yes, with one or two minor items which I will now clear up.

Mr. McKeon, would you be willing to stipulate that the tug Neptune was insured, carried marine insurance?

Mr. McKeon: The fact is that she did have marine insurance, your Honor, for the amount of

\$50,000, and it has [264] been paid. I don't think that has anything to do with the case, however; it is immaterial, but I don't want to oppose the fact.

Mr. Morse: Well, we have the same point of view in respect to most of this question of insurance. Now while I am on this matter of stipulating, I suggest that we stipulate that all exhibits may be withdrawn from the Court during the briefing period to aid us in briefing.

Mr. McKeon: So stipulated. Might I suggest, then—I had here on Friday the second mate of the Sea Fox, and Mr. Morse and I have talked about this. He holds a chief officer's unlimited license.

Mr. Morse: That is Captain Reichel?

Mr. McKeon: Oh, no.

Mr. Morse: I beg your pardon. Harris?

Mr. McKeon: Reichel holds a master's unlimited license and the mate, Harris, who was here Friday, holds a chief mate's unlimited ocean-going license.

The Court: Are you willing to stipulate?

Mr. Morse: I am willing to so stipulate.

Mr. McKeon: And he was mate on the Sea Fox.

The Court: Let the record so show.

Now before we go into those depositions, what is the importance of these depositions? Is it a repetition of what we have gone over before or not? [265]

Mr. Morse: They cover not only the weather conditions, the assistance——

The Court: All right, let's start with the weather conditions. Is there any question about the weather conditions?

Mr. McKeon: Well, I can't remember offhand, your Honor.

The Court: Well, aside from the deposition.

Mr. McKeon: Oh. I don't think there is any substantial difference between us. These depositions show, on the Coast Guard vessels, a recording of ten on their scale.

The Court: It would be cumulative, would it? Or wouldn't it?

Mr. Morse: Well, for example, the Sea Fox might have noted a wind force of 7 or a wind force of 8; our man might have noted a wind force of 5 or a wind force of 9 for the identical period. They have testified that their determinations of the wind force are from their own personal observation without the aid of mechanical means. So I am not making any issue myself of the differences.

The Court: Are you?

Mr. McKeon: No, your Honor.

Mr. Morse: In these minor differences, at least.

The Court: Then what is the purpose to be served here?

Mr. Morse: Well, furthermore, these depositions—and by the way, these depositions on the Coast Guard vessels are, as I understand it, from mechanical weather regulators. [266]

Mr. McKeon: I don't know; whatever they testified to.

Mr. Morse: Well, it is my belief that they are. I don't want to make a firm statement that they are.

The Court: However, if you want to make up a record, it is all right.

Mr. McKeon: Well, I think, your Honor, as long as the case is going to be briefed, it has been my experience to deem the depositions read in evidence, because we don't interpose objections as we go along to them. And in Admiralty, that has been the practice.

The Court: Well, they are all in evidence, are they? Let them be considered read. You can call the Court's attention to them in your briefs.

Mr. McKeon: Exactly.

Mr. Morse: Is that satisfactory?

Mr. McKeon: We will get into a lot of detail on the reading of those exhibits. We will be here all afternoon.

Mr. Morse: Of course in these exhibits the witnesses testify as to the services rendered not only by the Coast Guard vessels but the services they observed being rendered by other vessels; the danger involved, the danger of drifting ashore and things of that sort. So that there is material testimony in there in addition to the question of the weather.

Mr. McKeon: The Court is entitled to that testimony.

The Court: Oh, yes. There is positive testimony that one [267] of these mates was not worried at all. I think it was your client, was it?

Mr. McKeon: Yes, he was having——

Mr. Morse: That's right, the chief engineer, when they were all at anchor, said he was not afraid of drifting ashore.

The Court: All right.

Mr. Morse: That's the conclusion of the respondents' case.

Mr. McKeon: If the Court please, it has been suggested that the matter be submitted to your Honor on briefs, and——

The Court: I am going to demand an adequate record from both you gentlemen. What is the question for decision? You are talking for the record, so by the time you get your briefs in this case, it is liable to get cold. I am going to cut you down on time insofar as I can.

Mr. McKeon: We are anxious to comply with that, too, your Honor. The case, as we are contending and seeing it, is, what compensation is the Court to allow us in the way of salvage for the services rendered by these libelants and in substance we are at the mercy of the Court to compensate us.

The Court: How am I to measure that from the record?

Mr. McKeon: I think we will have to try to be helpful to the Court on the briefs. There isn't any hard and fast rule. It is in your Honor's discretion. It is not a case, in my experience, where there are analogous awards; you can't rely [268] upon hard and fast comparisons. Circumstances vary so differently that what some other Court has done in some other case is hardly any guide.

The Court: No, conditions vary.

Mr. McKeon: I was going to suggest, your Honor, that we take twenty days on our brief. The record has to be written up and we will furnish

your Honor with a copy of it, with the original record. That's agreeable?

Mr. Morse: Certainly.

Mr. McKeon: And the original is to be taxable as cost, your Honor.

Mr. Morse: That is agreeable.

Mr. McKeon: Well, we will do our utmost to get it in sooner than that.

The Court: Well, I might make this suggestion to you, then. Would ten, ten and ten give you all the time you wish?

Mr. McKeon: All right, your Honor. Let's take it ten, ten and ten.

Mr. Morse: That is satisfactory.

The Court: Well, you had better raise it now if that isn't sufficient, for you will be out here otherwise with an order extending time.

Mr. McKeon: Well, I have got to wait for the transcript, of course, your Honor.

The Court: Well, you would be surprised how efficient our [269] Reporters are.

(To the Reporter): When will this be available?

The Court Reporter: Tonight, your Honor.

The Court: Did you hear that?

Mr. McKeon: May I suggest we take 15 days from date and we will do our utmost to get it in. I have got to do something else——

The Court: What is your thought?

Mr. Morse: Ten days will be sufficient from the time I receive the brief.

Mr. McKeon: 15, 10 and 10?

The Court: 15, 10 and 5. That will be sufficient time.

Mr. McKeon: Very good.

The Court: Now that will be over to a day certain, Mr. Clerk.

The Clerk: February 26th for submission.

Certificate of Reporter

We, Official Reporters and Official Reporters pro tem, certify that the foregoing transcript of 270 pages is a true and correct transcript of the matter therein contained as reported by us and thereafter reduced to typewriting, to the best of our ability.

/s/ ELDON WHITE,
/s/ RUSSELL D. NORTON.

[Endorsed]: Filed July 5, 1951. [270]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the apostles on appeal herein as designated by the proctors for appellant:

Libel for Salvage.

Answer to Libel for Salvage.

Cross-Libel for Damages.

Answer of Shipowners & Merchants Towboat Co., Ltd., to Cross-Libel.

Answers of Respondents and Cross-Libelant, Waterman Steamship Corporation to Interrogatories Propounded by Libelants and Cross-Respondent.

Amendment to Libel.

Amendment to Answer to Libel for Salvage.

Amendment to Answer of Shipowners & Merchants Towboat Co., Ltd., to Cross-Libel and Interrogatories Propounded to Cross-Libelant.

Answers of Respondent to Interrogatories Propounded to Cross-Libelant.

Amendment to Libel.

Memorandum Opinion of Court.

Findings of Fact and Conclusions of Law of Court.

Amendments Proposed by Respondent to Findings of Fact and Conclusions of Law.

Final Decree.

Petition for Appeal.

Order Allowing Appeal.

Notice of Appeal.

Assignment of Errors.

Petition for Order Fixing Supersedeas Bond.

Cost and Supersedeas Bond on Appeal.

Citation on Appeal.

Stipulation as to Service of Papers on Appeal.

Praecipe for Apostles on Appeal.

Reporter's Transcript of Proceedings January
17 and 18, 1951.

Reporter's Transcript of Proceedings January
22, 1951.

Libelants' Exhibits 1, 2, 3, 4, 5, 6 and 7.

Respondent's Exhibits A, B, C, D, E, F, G, H, I,
J and K.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court this
16th day of October, 1951.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13135. United States Court of Appeals for the Ninth Circuit. Waterman Steamship Corporation, a Corporation, Appellant, vs. Shipowners & Merchants Towboat Co., Ltd., a Corporation, and Tug Sea Fox, Inc., a Corporation, on their own behalf and on behalf of the Master, Officers and Crew of the Tug Sea Fox, Appellees. Apostles on Appeal. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 17, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit
No. 13135

WATERMAN STEAMSHIP CORPORATION, a
Corporation,

Appellant,

vs.

SHIPOWNERS & MERCHANTS TOWBOAT
CO., LTD., a Corporation, and TUG SEA
FOX, INC., a Corporation, on Their Own Be-
half and on Behalf of the Master, Officers and
Crew of the Tug Sea Fox.

Appellees.

APPELLANT'S STATEMENT OF POINTS
RELIED UPON ON APPEAL

Appellant, Waterman Steamship Corporation, a corporation, hereby refers to points 1 to 21, inclusive, of its Assignment of Errors heretofore filed with the Clerk of the United States District Court in and for the Southern Division of the Northern District of California, and certified to the above-entitled Court by said Clerk as part of the record on appeal, and adopts the same as its statement of points relied upon on appeal in accordance with the provisions of Rule 19, subdivision 6, of the Rules of the above-entitled Court.

GRAHAM & MORSE,
/s/ CLARENCE G. MORSE,
Proctors for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 26, 1951.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PARTS
OF RECORD NECESSARY FOR CONSID-
ERATION AND TO BE PRINTED

Appellant, Waterman Steamship Corporation, pursuant to Rule 19(6) of the Rules of the above-entitled Court, hereby designates as necessary for the consideration of this appeal and to be printed the following parts of the record certified to the above-entitled Court by the Clerk of the United States District Court for the Northern District of California, Southern Division:

- (1) Libel for Salvage.
- (2) Answer to Libel for Salvage.
- (3) Cross-Libel for Damages.
- (4) Answer to Cross-Libel.
- (5) Amendment to Libel.
- (6) Amendment to Answer to Libel for Salvage.
- (7) Amendment to Answer to Cross-Libel.
- (8) Memorandum Opinion.
- (9) Findings of Fact and Conclusions of Law, dated June 20, 1951.
- (10) Final Decree, dated June 20, 1951.
- (11) Report of Transcript of the Proceedings had before the Honorable Michael J. Roche on January 17, 18 and 22, 1951, including Exhibits.

- (12) Petition for Appeal.
- (13) Order Allowing Appeal.
- (14) Notice of Appeal.
- (15) Praecipe for Apostles on Appeal.
- (16) Assignment of Errors.
- (17) Petition for Order Fixing Supersedeas Bond.
- (18) Cost and Supersedeas Bond on Appeal.
- (19) Stipulation as to Service of Papers on Appeal.
- (20) Appellant's Statement of Points Relied Upon Appeal filed in the above-entitled Court.
- (21) Appellant's Designation of Parts of Record Necessary for Consideration and to Be Printed.

Dated October 26, 1951.

GRAHAM & MORSE,
/s/ CLARENCE G. MORSE,
Proctors for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 26, 1951.

[Title of Court of Appeals and Cause.]

STIPULATION WAIVING THE PRINTING
OF CERTAIN EXHIBITS

The appellant and appellees herein, acting by and through their respective proctors, hereby stipulate,

in pursuance of the affidavit and application filed by appellant herein, that the following exhibits appended to the reporter's transcript of proceedings had before the Honorable Michael J. Roche need not be printed:

(1) Libelants' Exhibits 1, 2, 3, 4 and 5:

Exhibit 1: Certificate of Ownership of tugs.

Exhibit 2: Photograph.

Exhibit 3: Photograph.

Exhibit 4: Photograph.

Exhibit 5: Insurance policy.

(2) Respondent's Exhibits A, B, C, D, J and K:

Exhibit A: Tug Sea Fox log.

Exhibit B: Tug Hercules log.

Exhibit C: Contract for purchase of Herald of the Morning.

Exhibit D: Contract between Waterman and Everett Pacific for conversion.

Exhibit J: A large number of weather broadcast scripts.

Exhibit K: Chart of Pacific Coast.

In addition to the foregoing, it is stipulated that the exhibits appended to the depositions of Captain Eastman and Lieutenant Schmitz, which depositions are designated Respondent's Exhibits F and G, respectively, need not be printed.

Dated October 31, 1951.

GRAHAM & MORSE,
/s/ CLARENCE G. MORSE,
Proctors for Appellant.

/s/ JAMES A. QUINBY,
/s/ LLOYD M. TWEET,
/s/ STANLEY J. COOK,
Proctors for Appellees.

[Title of Court of Appeals and Cause.]

AFFIDAVIT AND APPLICATION FOR AN
ORDER WAIVING THE PRINTING OF
CERTAIN EXHIBITS

State of California,
City and County of San Francisco—ss.

Clarence G. Morse, being first duly sworn, deposes
and says:

That he is and at all times hereinafter mentioned
was one of the proctors for the appellant above
named.

That included in the record on appeal in the
above-captioned matter are all exhibits appended to
the reporter's transcript which were introduced in
evidence in the proceedings had before the Honor-
able Michael J. Roche in the United States District
Court for the Southern Division of the Northern
District of California.

That among such exhibits are certain exhibits

which are not of a type permitting of printing in the record, but on the contrary are of such nature that they can be more readily examined and will more properly portray the pertinent evidence if examined in their original form. Such exhibits are as follows:

(1) Libelants' Exhibits 1, 2, 3, 4 and 5:

Exhibit 1: Certificate of Ownership of tugs.

Exhibit 2: Photograph.

Exhibit 3: Photograph.

Exhibit 4: Photograph.

Exhibit 5: Insurance policy.

(2) Respondent's Exhibits A, B, C, D, F, G, J and K:

Exhibit A: Tug Sea Fox log.

Exhibit B: Tug Hercules log.

Exhibit C: Contract for purchase of Herald of the Morning.

Exhibit D: Contract between Waterman and Everett Pacific for conversion.

Exhibit F: This is a deposition which should be printed but the exhibits attached to the deposition are copies of log book pages and reports and should not be printed.

Exhibit G: This is a deposition which should be printed but the exhibits attached to the

deposition are copies of log book pages and reports and should not be printed.

Exhibit J: A large number of weather broadcast scripts.

Exhibit K: Chart of Pacific Coast.

Reference to specific items in these exhibits will be called to the Court's attention in appellant's brief, so that it will be unnecessary for the Court to search through these exhibits to elicit the evidence which appellant will wish to emphasize.

Wherefore, it is respectfully requested that an order may be made herein providing that exhibits as follows: Libelants' 1, 2, 3, 4 and 5 and Respondent's A, B, C, D, J and K, and the exhibits attached to the depositions designated Respondent's Exhibits F and G, introduced in evidence, need not be printed, reproduced or copied in the transcript of record on appeal, but said exhibits will be deemed a part of the transcript of record on appeal and so considered by this Honorable Court.

/s/ CLARENCE G. MORSE.

Subscribed and sworn to before me this 31st day of October, 1951.

/s/ HELEN E. WALSH,

Notary Public.

My Commission Expires October 22, 1954.

Service acknowledged.

ORDER WAIVING THE PRINTING OF
CERTAIN EXHIBITS

Upon the filing and reading of the foregoing affidavit of Clarence G. Morse, one of the proctors for the above-named appellant, and upon the motion of said appellant, and good cause appearing therefor, It Is Ordered that Libelants' Exhibits 1, 2, 3, 4 and 5 and Respondent's Exhibits A, B, C, D, J and K, and the exhibits attached to the depositions designated Respondent's Exhibits F and G, need not be printed, reproduced or copied in the transcript or record on appeal, but said exhibits shall be deemed a part of the transcript and record on appeal and be so considered by this Court.

Dated San Francisco, California, Nov. 1, 1951.

/s/ WILLIAM DENMAN,

/s/ HOMER T. BONE,

/s/ WM. E. ORR,

Judges, U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed November 1, 1951.